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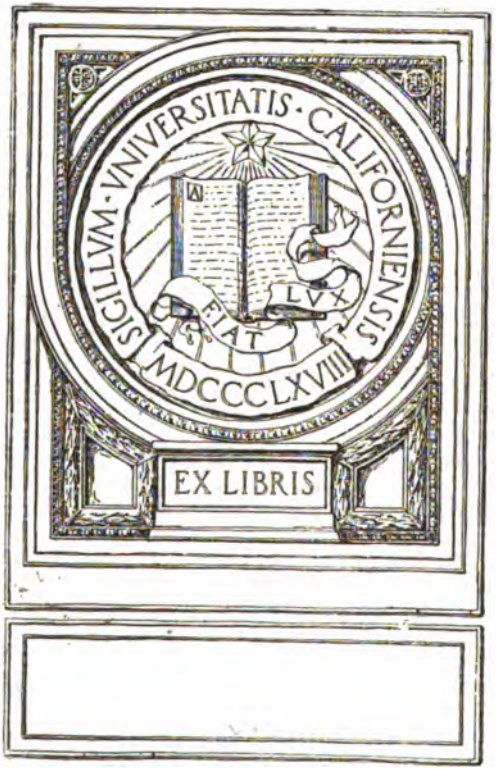
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TRACTS

WRITTEN IN THE CONTROVERSY RESPECTING THE LEGITIMACY OF

AMICIA,

DAUGHTER OF

HUGH CYVELIOK,

EARL OF CHESTER.

A.D. 1673 — 1679.

BY SIR PETER LEYCESTER, BART., AND SIR THOMAS MAINWARING, BART.

Reprinted from the Collection at Peover.

EDITED, WITH AN

INTRODUCTION,

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WILLIAM BEAMONT, Esq.

PRINTED FOR THE CHETHAM SOCIETY.

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From the original picture at Tabley

Leicester. 1665.

Leycester. 1666

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PART I.

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INTRODUCTION.

Stemmata quid faciunt quid prodest ordine longo
Sanguine censeri, pictosque ostendere vultus
Majorum, et stantes in curribus Æmilianos?

THE Roman satirist, when he put this stinging question to his degenerate countryman, who with a long line of ancestry was living unworthy of it, had no idea of disparaging the value of an illustrious descent, and would heartily have admitted that those who lived mindful of their good name might look back with pride upon the Scipios, the Fabii and others of like honour from whom they sprang, and consider their birth a truly great inheritance. But to those who were leading lives unworthy of their ancestry his question was a withering satire.

Scarcely any civilized people can be named either in ancient or modern times that has failed to treasure up its family genealogies. The Jews, who we know had a religious sanction for doing so, preserved theirs with a sacred care. The Egyptians, we read, by the mouth of their priests at Memphis put to silence a vainglorious Greek,

when he boasted that he could show his pedigree for twelve generations, by producing and showing him that of Rameses which went back for seventeen. In classic times the old heathens were fond of tracing up their origin, first to heroes and then to demigods. That the Romans venerated a good ancestral name is abundantly evident from their poets and historians. Horace did not think his first address to Mæcenas, the patron of letters and the muses, complete until he had added to his other titles the distinction of being sprung from ancient kings.

Voltaire, who sneered at heraldry and called it "the science of fools with long memories," would probably have included genealogy in his sneer; but, notwithstanding this opinion of the witty Frenchman, a respect for a good pedigree, and a desire to possess one, has become rather an instinct than a passion among the nations of Western Europe. The Castilians boast of their "blue blood," and the French of their Faubourg St. Germain, and the man would be thought a real anomaly who should own himself, as the poet has it, one

> ——— whose ancient but ignoble blood
> Has crept through scoundrels ever since the flood!

It may serve to shadow the universal allowance of the value of ancestry that the author of that popular drama, *The Rivals*, makes the thought of it recal, as it was fast oozing away, the fading courage of his frivolous hero "Bob Acres."

In the month of August 1385, or, according to the

satirist some years earlier,* there was begun in the court of the lord marshal of England the well-known case of Scrope and Grosvenor. Sir Richard Scrope, the complainant, charged his brother knight, sir Robert Grosvenor, with having usurped and worn his arms, a shield *azure* with a bend *or*, and challenged him to prove his title to it. Coat armour, at a time when knights and gentlemen cased in steel could only be recognized by the insignia on their shields, had an intrinsic value in itself. The king had "many marching in his coats" at Shrewsbury, and some of them, as we read, there paid a fatal penalty for the disguise. In the time of Richard II. heraldry was much accounted of as the handmaid of genealogy and family history, and the science saw its palmiest days. The Scrope and Grosvenor question therefore excited general interest, the whole country watching its progress, and awaiting the result with interest and anxiety. As the right to the disputed arms would depend upon usage, and this could only be proved by the

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* ——————— look at 'the Roll'
Which records the dispute
And the subsequent suit,
Commenced in 'Thirteen seventy-five' — which took root
In Le Grosvenor's assuming the arms Le Scroope swore
That none but *his* ancestors, ever before,
In foray, joust, battle, or tournament wore,
To wit '*On a Prussian-blue Field*, a *Bend Or*;'
While the Grosvenor averred that *his* ancestor bore
The same . . . . .

(*Ingoldsby Legends*, 2nd series, p. 234.)

production of many witnesses, it is not to be wondered at that it continued *sub judice* for four years or more. During this interval evidence was given on one side or the other of the use of the controverted arms, not only in various parts of England but in many different and distant parts of the world. Witnesses were called who had beheld its blazonry borne before the walls of Acre in the crusades; in northern France; under the standard of the Black prince; in the plains of Gascony and Poictou, and in many other famous places and fields of fame. The witnesses called were numerous and equal to the greatness of the occasion, for amongst them there appeared one sovereign prince, one duke, three earls, three barons, three mitred abbots, two priors, eleven bannerets, and more than one hundred and fifty knights, esquires, gentlemen and others, a roll which shows the great importance of the trial, and presents an array of witnesses such as no other case has perhaps ever seen either before or since. Under our altered estimate of its importance it might be more fitly dismissed with the words of a modern poet:

> Men are like birds in their contests together,
> And in questions of right will dispute for a feather!

Two centuries later there appeared in Europe two distinguished men, the Scaligers, father and son, both remarkable alike for their profound erudition and critical skill, and for their over-weening and consummate vanity. Julius, the father, was born in the castle of Ripa, near Verona, in the year 1484, and was the son of an illu-

minator of books and manuscripts, and compiler of geographical tables, named Benedict Bordoni. When he was forty years of age, and had by hard study in the course of a very active life acquired a vast fund of various knowledge, he conceived the idea of discarding and repudiating his real name and parentage, and of boldly creating for himself a new family and pedigree. With this end in view, his first step was to procure a grant of letters of naturalization. These letters, which he obtained in 1528, and in which he gave himself the high-sounding title of Julius Cæsar de Lescalle, he soon afterwards followed up by declaring himself the son of Benedict de la Scala, a personage whom he announced as a scion of the princely house of Verona and one of the most valiant captains of the fifteenth century, and who had been present at thirty-eight pitched battles and upwards of one hundred warlike expeditions and skirmishes. It mattered little that history and the chroniclers were alike silent as to the name, fame and achievements of Benedict de La Scala. "*Stat pro ratione voluntas*," was Scaliger's answer, so resolutely had he adopted this creation of his brain, and so entirely resolved was he to maintain it against all comers. It was a bolder work, and more dangerous to his reputation, than "scaling th' imminent deadly breach" could have ever been to his ancestor *La Scala*, had he been a real and not an imaginary personage. By some of the ablest of Scaliger's contemporaries it was said that his own age did not furnish his equal as a scholar, or antiquity show his

superior; and when he so stoutly maintained the reality of his mythical ancestor, he obtained, if not credence, at least that sort of indulgence, which is often conceded to one whose weak points are atoned for by very eminent merits. Neither the great Erasmus whom he first attacked, nor the famous Cardan against whom he last wrote, revenged themselves by publishing a single word against his family pretensions. When the elder Scaliger's life came to a close in the year 1558, his son and successor, Joseph Justus Scaliger, took up the family claim as "the quarrel of a true inheritor." But the son succeeded the father in another and far nobler inheritance than his vanity, the inheritance of his learning, in which he soon proved himself in scholarship more than his father's equal. In 1594, reducing into system the scattered notices in his father's various works, he appeared in print to defend his *princely* genealogy, and printed his most curious and interesting letter to Douza, *De vetustate et splendore gentis Scaligeræ.* This book, so full of arrogant and contemptuous assumptions, was not and could not indeed be expected to go unchallenged, and in the year 1607 the well-known scholar Scioppius led the onslaught upon it by publishing his *Scaliger Hypobolimæus, hoc est elenchus epistolæ Josephi Burdonis pseudo-Scaligeri de vetustate et splendore gentis Scaligeræ.* This work, in which Scioppius reckons up five hundred falsehoods in the *Epistola*, impressing each fresh figure upon the candidate for princely honours "tortore flagello," cut Scaliger to the quick; but he did not lose heart, and the next year he

put out his *Confutatio Stultissimæ Burdonum Fabulæ*, in which he refutes many of the statements in Scioppius's book, and deals admirably with the fringes of the question, but is evidently unable to establish the grand link which was to connect him with the princely Scaligers of Verona. It was evident that he was wounded, and that the hurt from his enemy's arrow had rankled and was to end fatally. In no long time after the victim died, and it was said that his death had been hastened by the mortification he had received from Scioppius's work, the irretrievable damage it had done to his reputation, and the ruin it had brought on his fictitious pedigree.

When the two mailed knights, "clad in complete steel," in the fourteenth century, engaged in the Scrope and Grosvenor controversy, they would have found themselves unequal to the contest except with those two sharp weapons, the tongue and the sword. But the Scaligers conducted theirs with the pen and the press, which marks a wide difference between their controversy and that which had preceded it.

The Amicia controversy, which in the seventeenth century agitated the county of Chester, and with which the present work has to do, was conducted by the heads of the two knightly families of Leycester and Mainwaring.

The Scaligers and their antagonists were scholars of world-wide renown, but sir Peter Leycester and sir Thomas Mainwaring, who now buckled on their armour to do battle for or against Amicia, were neither professed

scholars nor lawyers, but country gentlemen, who had made antiquities their study as an amusement. Each of them, however, was well read in the old chroniclers and historians, and so was well able to conduct his case with his own pen and from his own resources. Their quality as country gentlemen, and their ability thus to conduct it, marks another step in the conduct of a genealogical controversy. The Scrope and Grosvenor combatants appealed to the lord marshal's court of arms; the Scaligers appealed to the judgment of scholars; the Cheshire knights appealed to the county, which watched their skill in the use of their weapons, applauded or condemned each tilt in the combat, and awaited with interest the final result.

In many a Cheshire house the successive papers, as they appeared, were looked for, much as the successive numbers of a popular periodical are looked for now. Doubtless much correspondence passed about the controversy at the time, but, whatever it was, the editor has failed to discover any traces of it, and probably the whole has now perished. One satirical ballad, to be afterwards alluded to, having outlived more serious notices, has alone survived to our time, to show us that some of the contemporaries of the two competitors found an amusing side to the controversy, and made merry over it.

The "Scrope and Grosvenor" controversy was carried on to establish a right; the "Scaliger" to defend a fiction; and the "Amicia" to settle a disputed fact. What that

disputed fact was will be stated shortly, and will appear more at large in the course of the following work, in which the several papers of which it consisted will be printed.

But before proceeding further it may be as well to give a short sketch of the two champions who engaged in it.

Sir PETER LEYCESTER, then, who led the attack and carried it on to his death, was descended from a long line of knightly ancestors, sprung, as he believed, from the ancient earls of Leicester, but who, for more than three hundred years, had been settled at Nether Tabley in Cheshire. Sir Peter, who bore both his father's names, was born at the family seat on the 3rd March 1613, and on the 13th October 1629, when he was barely sixteen, he was entered as a gentleman-commoner at Brasenose college, Oxford, under the tutorship of the rev. Samuel Crane, afterwards successively rector of Mobberley and Alderley. As he did not take a degree, it is not exactly known at what period he quitted the university, but it is fair to infer from his subsequent career that the tutor had not neglected his pupil, nor the latter his opportunities. He appears to have brought with him from Oxford a taste for learning which he retained through life. According to a laudable practice common in those times, when a gentleman's education was not supposed to be complete without some knowledge of law, sir Peter repaired from the university to the inns of court, and on the 20th August 1632 he was admitted a member of the honourable society of Gray's inn. In 1642, that momen-

tous year of our history, sir Peter Leycester married Elizabeth, the daughter of lord Gerard, and from that time until the death of his father, he occupied himself in country pursuits, with as much quietness and privacy as the then troubled state of the country would allow. In 1647 he had the misfortune to lose his father, and he then removed with his family to the old house at Tabley. Here, surrounded by the scenes of his boyhood, and amid those congenial country pursuits which he loved, he devoted himself to books, and chose for his particular subject the study of history and antiquity, in which he soon found his university and legal studies stand him in much stead. Excluded by political circumstances, and by his own well-known disinclination to the then ruling powers, from public employment, he had no call made upon him either to serve the county as high-sheriff or his country in parliament. The same circumstances at this time also shut him out from the other public duties and offices which belonged to him as a country gentleman. Shocked at the extreme violence of some of the acts of the men in power, he thought, if he did not say,

——— when impious men bear sway
The post of honour is a private station.

But "sweet are the uses of adversity" to those who know how to use them as sir Peter did, when it led him more zealously, and with less fear of interruption, to devote himself to the prosecution of the pursuits of his choice, and for which, by natural taste and a well cultivated

mind, he was so admirably adapted. It being part of his design to illustrate the antiquities of his native county, and to give a succinct account of its earls and of some of its principal leading families, he directed his earliest attention to the complete verification and authentication of his own pedigree, and to establishing its several links, by reference to those original charters and documents which were either in his own possession or in the possession of others to whose archives he had access. He next took care, by the same means, to note and correct the pedigrees of the other Cheshire families with whom, in blood or by marriage, he was more immediately connected. Resolving to take nothing upon trust or without actual proof, through an innate taste and fondness for his work and an antiquary's diligence, which gave him great adroitness in it, he had, before the year 1649, fully established his fame as an exact and accurate inquirer; a title which was fully recognised by those best able to judge of it, Dugdale, Vernon and their fellow antiquaries. During the three following years, with unwearied diligence, he employed himself in collecting materials for the history of Bucklow hundred, in which he scrupulously rejected every alleged fact and circumstance which he did not find fully borne out and supported by original documents. But the political party with whom he could not sympathise were at this time supreme, and sir Peter being obnoxious to them as a royalist, was now dragged from his favourite pursuits and his quiet home, and carried prisoner to Chester

castle. How long he was immured does not appear, but this was the time

> When nobles and knights, so proud of late,
> Must fine for freedom and estate.

As of others at that time, so of sir Peter the *fiat* went forth :

> Right heavy shall his ransome be.

And accordingly, in the year 1655, we find him compelled to compound for his estates, and to pay the sum of 778*l.* 18*s.* 4*d.*; a sum which, compared with the extent of his estate, was large even then, but which, expressed in the value of our present money, would appear much larger now. (*Hist. Cheshire*, vol. i. p. 461, in notis, and Catalogue of Sequestrations.)

He appears after this to have been allowed to remain for a time in peace, and, employing himself with double diligence in collecting additional materials for his history, he eagerly profited by his leisure. From the year 1657 until the Restoration, he was engaged in arranging, digesting and still further augmenting all his vast and various manuscript collections.

Having suffered for his loyalty he hailed with great satisfaction the restoration of the monarchy, and on the 10th August 1660, barely two months after that event, his majesty was pleased to create him a baronet, and, had he wished it, the king would have probably added to it some office of honour and profit. But

—— loyalty is still the same
Whether it win or lose the game ;

and having been swayed in his loyalty by no mercenary thoughts, he declined any remuneration for his losses, and was content to take the sense of having done his duty for his reward. But the cause which had debarred him from the county magistracy, and deprived him of the opportunity of public usefulness, no longer existing, sir Peter, having qualified himself to act as a justice of the peace, and having probably been made a deputy-lieutenant, was very soon afterwards elected chairman of the quarter sessions of the peace for the county of Chester, which office he continued for some years to fill.

In the hurry and bustle which necessarily succeeded the commencement of the new reign (for new it was, except by the fiction which made the king's accession date from the year 1649), there was a short lull in sir Peter's literary pursuits, but it did not hold him long, for in 1664 his love of study revived with all its old ardour, and he again set himself vigorously to work to illustrate and restore the antiquities of his native county. He continued augmenting his stock of materials until 1672, and the next year he gave them to the world, under the title of *Historical Antiquities, in two books: the first treating in general of Great Britain and Ireland; the second containing particular remarks concerning Cheshire.* Among the *prologomena* of this work were original lists of the county officers, an admirable history of the Norman

exidom, and, in the latter part, the parochial topography of the entire hundred of Bucklow.

This work, the only one, except his contributions to the Amicia controversy, which he ever published, sets in a shining light sir Peter's taste, ability and industry as a writer, and by its general accuracy and exactness shows how well he was fitted to undertake it. The work bore evidence to his minute and extensive acquaintance with the old chronicles, and showed how scrupulously his reading had enabled him to avail himself of their rather uninviting contents.

To quote the language of Dr. Ormerod, a successor worthy to tread in sir Peter's footsteps, and fully capable of appreciating his merits:

> The subject of his investigations lay immediately around him, and had been known to him from childhood. Nearly all the families of the hundred must have been his personal acquaintance, and some of the most important were his near kinsmen. ..... The actual evidences of the several houses appear to have been at his command, and he transcribed them with a patient labour which only they who have traced his progressive collections can appreciate.
>
> His peculiar excellence seems to have been that in the pursuit of his object he uniformly resorted to original documents, and was never deterred from toiling through them, though of the most uninteresting and voluminous description; that he built his accounts solely on what had been proved by regular evidence, despising the vague traditions which before his time had rendered topography contemptible; that he conveyed his information in a clear and unadorned narrative, unburdened by extraneous ornaments of diction, or by facts which might amuse the reader but were foreign to his purpose; and that on every occasion he held

religiously to what he believed to be the truth, however unwelcome it might be, or however its promulgation might jar with his comforts or his interest.

It was to this quality that we owe the Controversy which is the subject of the following tracts, and we may concur in the character given of him, that "he was indefatigable in searching after truth and fearless in asserting it," and that "his merits have elevated sir Peter Leycester above every topographer that preceded him." (*Hist. Cheshire*, vol. i. p. 462.)

The voluminous and well digested mass of papers on a great variety of subjects, which sir Peter collected and which still remain at Tabley contain, amongst others, prayers and religious meditations on various occasions; biographical sketches of his contemporaries; charges to the grand jury, delivered in his capacity of chairman of the quarter sessions; plans of a connected course of historical reading, which show his own manner of study; large collections of original documents and abstracts; and numerous manuscripts of a private and domestic character.

"Studia alia aliorsum me ducunt, Theologiam cæteris omnibus præfero cujus studium humano generi apprime necessarium duco," wrote sir Peter in his address to the judges before one of his Amicia tracts. In 1621 sir Peter Warburton, one of his neighbours and a judge of the Common Pleas, died, and when an account was afterwards taken of his library, it was found to contain more books of divinity than of law; and the will of Philip

Mainwaring, of which a short extract will be given hereafter, gives evidence of a similar leaning to the gospel rather than the law. These examples, which might be largely multiplied, justify the poet's estimate of the chivalry of that day :

> Our ancestors, a gallant Christian race,
> Patterns of every virtue, every grace,
> Confessed a God!

Theirs was a serious age, and sir Peter Leycester in that respect clearly sympathised with it. Running into none of those wild religious excesses into which, in that age, many others were betrayed, he showed by his whole career that he was a pious and devout Christian, and that the religious reading which he loved, influenced and refined his whole conduct. At the very outset of his career the political horizon was dark and lurid; we need not wonder, therefore, that its effect on sir Peter's mind was to deepen his impression of the necessity and value of the solace and comfort of religion. While others were hurried away by over-zeal to seek comfort in some new forms of faith, sir Peter held fast by the church of England, and adhered to her in the time of her greatest trial. His manuscripts, which show how much he was a man of prayer, abound with forms of private devotion, which he composed both when he was in prison and on many other occasions. This habit, which had solaced him in his trials in early and middle life, did not desert him in his grey hairs. In the year

1675, when the taper of life was fast waning, sir Peter, thinking with one of old, "dierum reliquias recolligere et deficientis ætatis fragmenta reponere ac terrena in celestia, transitoria in æterna felici communio commutare, et vespertinum offere sacrificium" (Southey's *Com. Place Book*, third series, p. 3), determined to build, and did build, the domestic chapel at Tabley, which still bears this inscription over the entrance door:

Exaudi Domine supplicationes nostras
Quandocunque manibus expansis
Ex hac domo sanctissimum nomen tuum
Invocabimus et cum exaudias miserere
Infinitæ bonitatis tuæ gratiâ Jesu Christi.
Amen. M.DC.LXXV.

Sir Peter's house at Tabley, built upon a small island in the park, appears to have been originally quadrangular, but only the eastern side of it now remains standing. To the left of the great entrance doorway there is a low wainscoted hall, of which about one fourth is occupied by a large oak staircase, which runs along two sides of the apartment. On the west side of the hall there is a large chimney-piece with the date 1619 upon it, which is ornamented with quaint carvings of various classical subjects, executed in the grotesque style of that age, and of which the colouring is as fanciful as the carving. Opposite to the fire-place there is a large bay window, with the family pedigree in stained glass emblazoned in it. The domestic chapel just mentioned stands towards the south. It is furnished with large bay windows at the sides, a pointed

window at the east end, and a bell turret at the west, and it bears in the interior a resemblance to a college chapel, but the congregation who assemble in it for worship are, and always have been, seated so as to separate the sexes, the men being placed on one side and the women on the other. The venerable hall, covered with its mantle of ivy, the picturesque chapel, the sequestered look of both, the calm lake in front, the woods and uplands beyond, all combine to give interest to the scene, and inspire a wish that it may continue to gladden the eyes of many a future generation of pilgrims who shall visit the hallowed home of the great antiquary, sir Peter Leycester.

Sir Peter's temper was genial and social, but it had its occasional infirmities, as we see by the taunt thrown out by sir Thomas Mainwaring (p. 288 *post*), and which seems confirmed by the expressions in which sir Peter at times indulges in the tracts. Sir Peter's judgment was sometimes obscured by his fondness for the discovery he had made and by his great desire to support it, in which case his firmness verged on obstinacy, and disturbed a temper even so generally equable as sir Peter Leycester's. And it is thought that this circumstance somewhat tended to embitter and shorten the last days of the great antiquary's life.

Sir Peter's lineaments have been preserved to us by a faithful portrait of him which still remains at Tabley, in the possession of his noble descendant, lord de Tabley, and of which an excellent engraving forms the frontispiece of the present volume. If it be true that a good

countenance is a good letter of recommendation, sir Peter could not have wanted any better letter than his face. It is the index of a mind in which rare intelligence is mingled with that benevolence which is not mere good nature, but which is "sense and spirit with humanity." The artist has thrown into his face as he sits on the seat of justice an expression of great dignity and firmness, without obscuring the milder and more genial traits of his character. A prisoner, conscious of guilt and standing at his tribunal, must have quailed before that dark, searching, lustrous eye, which, in his social moments and among his friends and brother antiquaries, must have lighted up his beautiful features with a glow of intelligence and brightness. The mouth is expressive of great firmness, a feature of his character which made him hold to his principles through the arduous times of the interregnum, and made him press perhaps a little too far his arguments against the lady Amicia. The artist (possibly sir Peter Lely) and his subject were happy in each other, and the result is a portrait so remarkable for its force and beauty, that it will dwell very long on the memory of whoever has once seen it.

In the year 1666 sir Peter altered the spelling of his surname from Leycester to Leicester, and a fac-simile of his two autographs is given under the portrait. He did not, however, always adhere to the altered spelling, as the tracts show.

In the old hall at Tabley, where he was born and where he had spent his life, sir Peter breathed his last on

the 11th October, 1678. He was buried in the family chapel at Great Budworth, and a very few weeks afterwards, she who had been his faithful partner through life was laid in the same tomb by his side, and both are commemorated by an epitaph, which may be seen in the *History of Cheshire.*

Sir THOMAS MAINWARING (sir Peter Leycester's strenuous opponent in the Amicia controversy), descended from a well-known Cheshire family which had been settled there from the Conquest, and many of whom had distinguished themselves in the camp and the court, first of their palatine sovereigns and then of our English kings, whom they had served both at home and abroad, was the son of Philip Mainwaring, esq., of Peover, at which place, or at Baddeley, his father's other seat, he was born on the 7th April 1623. Like sir Peter, he was sent to Oxford, and there entered as a commoner of Brasenose college on the 20th April 1637, at the unusually early age of fourteen. His great literary antagonist, sir Peter, had preceded him only eight years before. There was a remarkable similarity in the career of the two rivals. Like sir Peter, sir Thomas left the university without taking a degree; like him, he had not misused his opportunities; like him, he repaired from the university to the inns of court, where, like him, he was admitted of Gray's inn on the 2nd December 1640.*

* The entry calls him "Thomas Mainwaring of Chester city."

The fame of his great ancestor, Ralph Mainwaring, and of his marriage with Amicia, combined with the then prevailing custom that young gentlemen should repair to some inn of court to complete their education, had probably some share in drawing sir Thomas Mainwaring to drink in law at the fountain head.

The Norman kings held a supreme court of justice called, from the hall in their palace where it sat, the *aula regis*. In this court, where, by themselves or their deputies, they were supposed to be always present to administer justice, they exercised jurisdiction over all matters secular, as well civil as criminal, and had always to assist them a presiding judge, who was called the *capitalis justiciarius Angliæ*. As the king's chief adviser, this officer in time acquired such power that it was found necessary to curb and control it, and in the reign of king John means were taken to that end, when its powers were circumscribed and limited. The Norman earls of Chester, within their own borders, were close imitators of the crown from which they derived their power. They had their *aula comitis* and their justiciary, who exercised similar powers in the county to those of the king's justiciary elsewhere, and was a close copy of the same officer in the king's court. His office, in the time of Hugh Cyveliok, closely resembled that of the *capitalis justiciarius Angliæ*. He presided at all trials, civil and criminal, in secular matters; transacted all legal business between party and party; passed all fines; enrolled all deeds in the great Cheshire Domesday book; and witnessed all transactions

where more than ordinary solemnity was required. The Cheshire Domesday roll has perished, but among the fragments of it which have come down to us are the enrolments of two releases made before Ralph Mainwaring, justiciary of Chester, in the time of king Richard I. (Ormerod's *Miscel. Palatina*, Domesday roll, 11.)

But besides the great burden of judicial business which rested on the justiciary, he was the earl's chief adviser in the affairs of his court and county. We hardly need wonder then to find Ralph Mainwaring, who had married earl Hugh's daughter, in such favour with the earl when he afterwards rose to be justice of Chester. When the earl visited Coventry or any other of his distant possessions, the justiciary accompanied him, and both there and elsewhere was the witness to the earl's charters, and took precedence before either his constable or his steward, or any of his barons or other officers. Traditions of the greatness of Ralph Mainwaring and of his lofty alliance were fondly cherished in the Mainwaring family, where not long before the time when sir Thomas was to choose a career, they had received high sanction under the hands of those eminent antiquaries and heralds, Erdswick, Camden (*Clarencieux*), and St. George, Windsor herald; and at a still later period the learned Camden had again further sanctioned them by this printed passage in his *Britannia:*

Cum jam Danus sub Northwich, cum Wevero aquas consociaverit, in occasum recta prolabitur Wever Peverumque recipit ab ortu, qui præterfluit et nomen facit Pevero, ubi habet sedem vetusta

illa nobilis familia de Meinilwarin vulgo Manewaring e quâ Radulphus duxit filiam Hugonis Kevelioc comitis Cestriæ. — Camden's *Britannia* (Editio Latina), p. 462.

In 1642, when the sky was growing dark around the monarchy, the king, counting on the loyalty and good will of his subject, Philip Mainwaring, sir Thomas's father, addressed to him the following ominous and urgent letter :

C. Rex.

Trusty and well beloved we greete you well Whereas wee have occasion to speake with you about our very especiall service, our will and pleasure is that you immediately make your repayre unto us, and hereof you may not fayle as you tender our high displeasure and will answer the contrary at your uttermost perill since if you shall neglect to attend us wee cannot but conceive you to be ill affected to us and our sayd service and shall bee forced to proceede against you accordingly Given at our court at Chester the 24 Sept. [1642]

To Philip Mainwaring Esquire.*

What was the exact effect which this missive had we are not informed, but it probably did not draw Philip Mainwaring to Chester. Possibly he was hindered from going thither by that which is mightier than kings, an unavoidable sickness, for certain it is, that only one short month before, as if warned of his end by symptoms of disease, he had employed himself in setting his house in order, by settling his worldly affairs and making his will.

* From the original letter, preserved at Peover.

The tone of this will is so religious, that the following extract from it may not be unacceptable :

Aug. 2. 18 Car. I. 1642. In the name of God the father God the sonne and God the Holy Ghost, Amen. the 22 day of August, the 18th yeare of the raigne of our sou'aigne lord kinge Charles of England &c and in the yeare of our Lord God 1642. I Philip Mainwaringe of Peover in the countie of Chester Esqr (being in as good health of body as usually I have beene for many yeares past and of good and perfect memory, praysed be Almighty God for both) do ordaine make and declare this my last will and testament in manner & forme followinge viz. First I bequeath my mortal soul to the blessed keepinge of my gratious God who creatinge it infused it, & infuseing it created it, in all assured humility trusting that my many manifold and most grievous sins are all of them and every one of them fully pardoned & remitted to me & clearely washed away in that most pretious bloud of that imaculate lamb Christ Jesus slaine from the beginninge of the world, for the sins of the whole world & in particuler for myne. And by this bitter death of his alone I hope to enjoye the sweetnes of Eternall life and blisse ; And for that fraile piece of clay, that craizie spare body of myne I wish it may be decently interred in our peculiar dormitory or buryall within the chappell of Over Peover there to rest in peace till the general resurrection : yet this at the discretion of my executors hereafter named if my dissolution shall happen farre from home. However or wheresoever I forbidd all pompe. I desire both to live and dye a meeke and humble Christian & a funeral suitable to such a one. Noe blacke at all but in my owne house. This notwithstanding, let the poore bee remembred in a fitting manner not onely at Peover but at Baddeley also if it please God I dye there, &c.

Also I give & bequeath to my sonne Thomas Mainwaring all my bookes of what sort soever : but as an heire-loome to our poore family to be kept & preserved for the use & benefite of

my said sonne Thomas & the heires males of our family for ever successively wishing there may be a constant addition of good & choice authors to it till it become a compleate library & these my imp'fect beginnings perfected and I humbly beseech God of his infinite mercie to sanctifie the excellencie of knowledge (even true saving knowledge) to him & them for ever.

In Philip Mainwaring's days it was the general custom for men to put off making their wills until the near approach of death. He, however, seems to have thought it wise not to put off so serious a matter, but to prepare for the end in time, for he lived on after making his will until the 10th December 1647. When the end he had looked for came he closed his eyes in peace, and his son, sir Thomas, entered upon his inheritance. Here again the careers of the two rivals, sir Peter and sir Thomas, touched each other. Sir Peter had just lost his father and entered upon his estate at the same time that sir Thomas entered upon his. Hitherto there had been a coincidence of events in the lives of the two men, but their paths were now to diverge for a time, but only to come together again afterwards.

In the meantime

> One chose the losing, one the winning, side.

At the breaking out of the great civil war sir Thomas Mainwaring cast in his lot with the parliament party, held up his hand for the covenant (*Hudibras*, i. 76, in notis), and afterwards took the engagement oath. The house of Mainwaring, however, was a divided and not

an united house at that time. Two of them, both colonels, served under the parliament: Henry Mainwaring, who was of Kermincham, commanded the Cheshire militia, and is twice libelled in some satirical verses of the time (*Warr in Lancashire*, Chetham society, 120–157); and Robert Mainwaring, who was chosen one of the king's judges, and saved his life by declining the dangerous office. Arthur Mainwaring, another of the family, was sent by the parliament to serve in Ireland, and their distant connections, the Minshulls of Stoke, with whom the poet Milton was remotely connected, would tend to draw them still nearer to the parliament side. On the other hand, sir William Mainwaring lost his life in the service of the king in the year 1644;* while sir Thomas Mainwaring, the recorder of Reading; lady Mainwaring, his widow; Peter Mainwaring, junior, of Smallwood;

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* Sir William and captain Allington were killed at the same time in the streets of Chester, and in the cathedral there is this monument to him:

To the perpetuall memory of the eminently loyal Sir Wm Mainwaring knight, eldest son of Edwd Mainwaring Esq., chancellor of the County palatine of Chester, of the ancient family of Mainwarings of Peover in the said county, who died in the service of his prince and country, in the defence of the city of Chester, wherein he merited singular honour for his fidelity, courage and conduct..... He died honourably, but immaturely, in the 29th year of his age, Oct. 9, 1644. His lady erected this monument of her everlasting love and his never dying honour, Oct. 25, 1671. Lyson's *Ches.*, p. 574, in notis.)

Sir William Mainwaring is one of the few heroes honoured with a portrait in the unique window of stained glass in Farndon church, which Lyson says was put up in 1658. (*id.* p. 656; *Hist. Cheshire*, by Dr. Ormerod, vol. ii. p. 407, where a copy of the window is given.)

and Elisha Mainwaring of Martins, were compelled to pay for their loyalty by compounding for their estates (Catalogue of Sequestrations, *passim*). Another connection of the family, Elias Ashmole, the historian of the order of the Garter, who married, first, a daughter of Peter Mainwaring of Smallwood, and secondly, lady Mainwaring, the widow of the recorder of Reading, and who was also a loyalist, seems to have lived on intimate terms with the Mainwarings, and had he not lived before the Amicia controversy, we might have had his opinion upon it, which, from such a genealogist, would have been of value. When Ashmole was made a freemason at Warrington on the 16th October 1646, colonel Henry Mainwaring was initiated into the craft at the same time. (*Ashmole's Life*, by Lily, p. 15.)

Although sir Thomas Mainwaring does not seem to have ever held a military command, he once filled the highest office of the peace in the county, when Cromwell, in the year 1657, made him its high sheriff. Unlike those who preceded and followed him, however, he held the office only for a single year, probably because the death of the protector interrupted the then ordinary practice of the time, when the sheriff often served for a longer time.

In 1653 his mother erected for him the handsome and spacious range of stabling which, in solidity of structure, harmonises with the old hall built in 1586, and in which sir Thomas lived and died, at Peover. It will accommodate sixteen horses, and is fitted up in a palatial

style. The stalls are divided by well carved and well proportioned Tuscan columns, carved in solid oak, and from stall to stall, above the columns, is a well executed

architrave and cornice, handsomely enriched with carvings. No modern stables can surpass it in stateliness, dimensions and well ordered contrivance.

In that age a dove-house was thought an essential appendage to every great house, and three years later the same benefactress added such a building to her other improvements of the family mansion at Peover.

This enlargement and improvement of the family seat was possibly a resource to which the family betook themselves from the troubled state and unsettled politics of the time, which inclined the gentry to travel less and remain more at their own homes. Thus, in the end,

they were led to attend to the improvement of their estates, and so out of evil came good.

In the year 1660, when the Convention parliament was chosen, sir Thomas Mainwaring was elected to it as one of the members for the county, having for his colleague the celebrated sir George Booth, afterwards lord Delamere, which shows that sir Thomas Mainwaring's politics were now approaching the same colour as sir Peter's. The year before, when sir George Booth rose on the king's behalf, Roger Mainwaring of Kermincham, and Elisha Mainwaring of Martins, both rose with him, and were made prisoners at the battle of Winnington and sent to Chester castle. (*Hist. Cheshire*, preface, xli.) Probably prudential motives then held back sir Thomas, like many others, from openly helping to forward a cause which he nevertheless wished to succeed.

But sir Thomas Mainwaring was now in favour at court, and on the 22nd November 1660 the king created him a baronet, and he and sir Peter Leycester had once more reached the same goal.

The return of a more settled government left sir Thomas at leisure to attend to home and country pursuits. He no longer sought a return to parliamentary life, but employed himself about the improvement of his estates. In 1665 he constructed a park round the family mansion at Peover, and had it stocked with deer.

In 1670 he sustained a great loss in the death of dame Mary, his wife. She was a daughter of sir Henry Delves, and died and was buried at Peover. Had she lived a

few years longer sir Thomas might have avoided some of the bitterness which almost inevitably arose from the Amicia controversy, or might, with her sympathy, have been better able to bear it.

The tradition of their ancestor's marriage with earl Hugh Cyveliok's daughter, we have said, was fondly cherished by the family of Mainwaring; and sir Thomas, who, besides the library mentioned in his father's will, had a large collection of family charters, with both of which he was well acquainted, though in other respects he was inferior to sir Peter as an antiquary, had early employed himself upon his pedigree, and in verifying its several particulars. Until his time all the heralds who had noticed Ralph Mainwaring's great match had made Amicia a daughter of Bertred, and consequently sister of the whole blood to earl Randle Blundeville, which is shown both by the family pedigree compiled by Glover, of which the following is an extract, and by the pedigree before mentioned as having been certified by Camden.

Hugo Kevelioc Comes Cestriæ quintus = Bertradis filia Simonis Comitis Ebroicen'

Constancia filia et heres Conani Comitis bretanniæ relicta Gaufredi filii Regis Henrici secundi	Ranulphs cognomento Blundeville Comes Cestrie Sextus	Clemencia filia Dni Radulphi de Fulgeriis. Uxor secunda	Matildis primogenita nupta Davido Comiti Huntingdoniæ filio Henrici Comitis Huntingdoniæ ♔	Mabilla nupta Will'mo de Albiniaco comiti Arundelie	Agnes nupta Will'mo de Ferrariis Comiti Derbeie	Hawisia nupta Roberti de Quincy	*Amicia nupta Radulph: Mennil- War'.*

Before the year 1647, however, the truth slowly dawned on sir Thomas Mainwaring, and having then begun to doubt whether Amicia was actually the daughter of Bertred, he was led to correspond with other antiquaries on the subject, and amongst them, with William Vernon, Dugdale's most able coadjutor, from whom he received a letter, of which the following is an extract:

Deare and ever respected freind.

You^r^ free expressions and readie willingnes to communicate still to me (the unworthiest of those y^t^ are called lovers of antiquities) these hidden secretts of the countie of Chester wich I n^t^rally affect and many judicious men in former ages never inquired after but tooke things upon relac̄on as many discents collected witnes and were at severall visitac̄ons counted authentique must needs oblige me in a strong tye of thankfullnes wich is all you can exspect from him y^t^ can make noe other requitall

I have heard from my kinsman Math. Mainwaring y^t^ he sawe the deed as also Sr Rand. Crewes opinion therof seene likewise many discents thereof testifying the same, but yet dare not positively conclude Amicia to be Lēgitimate for that she had noe ꝑte in the ꝑticon; onely the Meanes of y^t^ family compatively wth the rest might cloude their favor towards them whereby noe share was allowed them or y^t^ the sought after it is dubious

I have according to your desyer drawne a draught of the families discent as well as one could that never sawe any of the evidence belonging to that family haveing anexed in the margent such notes to prove there were such men as I have met w^th^all, relateing where the are to be seene, but where I could not by any p̄fe y^t^ came to my knowledg upon certaine grounds, knit the lyne together, I have soe left it, not confiding in the viewe of former discents whereof I have seene many, but leave it to be proved by those y^t^ are better seene into these hidden archana of

antiquitie, not troubling you wth repition of those proofes I sent you that Raphe Mainw: was justice of Chester, y^t^ he married the E. Hugh's daught^r^ and that Earl Rand. was unckle to Roger or that Roger gave Peever to his younger sonne William from whom this family is now descended; for supplem^t^ of proofe I refer you to the small tres alphabetically sett downe in the inclosed onely lett me add for the marriage of Wm Mainw. to Leicesters daughter of Tabley after the death of Joane the coheire of Praere, y^t^ I conceive it to be true upon this ground, that Leicester nephew of her that married Wm Mainw. first setled his estate upon himselfe and his heires, the remaynder to John Maynw: with remaynder to Randall his brother wth other remaynd^rs^, that after he made another feoffm^t^ and left Jo. Maynw. forth (who was then dead as I suppose), and settled it upon Randall. I tooke notes from the deedes but cannot for the present give you a better account thereof: to proofe the daughters of John Mainw. I had it out of an old manuscript which was had from a younger brother of y^t^ family beginning from Randall y^t^ marr^d^ Margerie the relict of Buckley comonly call'd the good Honkin Mainwaring [The rest does not relate to Cheshire matters.] Your true thankefull freind

[The address of the letter is gone.] and servant

Shakerley the 2^d^ of 1647. WILL: VERNOUN.*

Sir Thomas Mainwaring, being thus well read in his family pedigree, which had been a cherished subject with him, no sooner heard of the publication of the *Historical Antiquities*, in which its author had stated his opinion that the lady Amicia was illegitimate, than he entered the lists in her defence, and, in 1673, published his first

* From the original, *penes* sir Harry Mainwaring, at Peover.

pamphlet in the Amicia controversy, which, with the several others from his pen as well as those from sir Peter's, will all be found in the following work. It does not appear that sir Thomas, besides his share of these tracts, ever sent to the press any other work.

Sir Thomas, who had lived through the great civil war, saw also the revolution, and we may be sure which side he took in it, since his son, sir John, who had married the daughter of Roger Whitley of Peel, at whose house king William III. slept on his way to the Boyne, was then member for Cheshire.

When that aged lawyer, serjeant Maynard, came to congratulate William III. on his accession, the king, addressing the serjeant, who had lived through the great civil war, said to him: "Serjeant Maynard, you must have seen many changes of the law." The serjeant said: "Yes, and if your majesty had not come I had survived the law." Although not so old, and not a lawyer like the serjeant, sir Thomas Mainwaring, had he seen king William, might have been addressed in the same terms and might have made the same reply.

Like his rival sir Peter, sir Thomas died in a moated and mullioned house, raised at a time when men built

> Less against the elements
> Than their next neighbours!

He died at Peover on the 28th June 1689, having attained very nearly the same age as his relative and opponent sir Peter. Like sir Peter, he was buried in

the family chapel, but, unlike him, he is commemorated by no epitaph.

The family chapel at Peover, which is described in the *History of Cheshire*, contains many memorials to others of the family, some of which are very beautiful, but no monument or memorial exists to mark the last resting place of sir Thomas Mainwaring or his lady. Surely sir Peter's great opponent should have been, like him, commemorated!

A portrait of sir Thomas Mainwaring, engraved from a painting at Peover, forms the frontispiece to the second volume of this work. Though he never served in the field, the artist has chosen to represent him in armour, which, however, is far less incongruous than the flowing curls with which his head is decked.

Sir Thomas has not been so fortunate in his artist as sir Peter was, yet the portrait may serve to give us an idea of his character, and show the mind's complexion in the face. We look on it in vain to find the energy and vigour with which sir Thomas, to maintain the family honour, took up and conducted the defence of his ancestress. The expression is rather that of a bold, studious and intelligent gentleman, who had a handsome but somewhat feminine face, and who, of the two sides in any difference, would always be sure to take the lady's part.

Having given this sketch of the two principals in the great Chester controversy, we now pass on to examine

and summarise their arguments, and finally to state what seems to be the conclusion of the whole. A controversy which lasted five years was almost certain to become wordy. "Striving mightily" to support each his own view, both parties admitted into the dispute many things which were quite foreign to its merits, repeated the same arguments again and again, and so multiplied the issues as to increase the reader's trouble and cloud his judgment. In our review of the controversy we shall omit whatever has no direct bearing upon the issue, and may be left out without injury to either of the champions. Before entering upon it, however, it may be as well to give the titles of their several papers as they appeared, and a few general words in explanation of each.

These, then, are the titles of the several works which comprise the controversy :

1. A Defence of Amicia, daughter of Hugh Cyveliock, earl of Chester ; wherein it is proved that sir Peter Leycester, bart., in his book entitled *Historical Antiquities* in two books : the first treating of Great Britain and Ireland ; the second containing particular remarks concerning Cheshire, hath without any just grounds declared the said Amicia to be a bastard. By sir Thomas Mainwaring of Peover in Cheshire, baronet. London, 1673. 12mo.
2. An Answer to the book of sir Thomas Mainwaring of Peover in Cheshire, baronet, entituled, *A Defence of Amicia, daughter of Hugh Cyveliock, earl of Chester*, wherein is vindicated and proved, that the grounds declared in my former book concerning the illegitimacy, are not evinced by any solid answer or reason to the contrary. By sir Peter Leycester, baronet. A.D. 1673. 12mo.

3. A Reply to an Answer of the Defence of Amicia, daughter of Hugh Cyveliock, earl of Chester. Wherein it is proved that the reasons alledged by sir P. Leycester in his former books, and also in his said Answer concerning the illegitimacy of the said Amicia are invalid and of no weight at all. By sir T. Mainwaring of Peover in Cheshire, baronet. London, 1673. 12mo.
4. Addenda: or some things to be added to the former Answer to sir T. Mainwaring's book, to be placed immediately after page 90. Nov. 1673. 12mo.
5. An Answer to sir Peter Leycester's *Addenda, or some things to be added in his Answer to sir Thomas Mainwaring's book*, written by the said sir T. Mainwaring. London, 1673–4. 12mo.
6. Two Books: the first being styled, *A Reply to sir Tho. Mainwaring's book, intituled An Answer to sir P. Leycester's* Addenda. The other styled *Sir T. Mainwaring's Law-Cases Mistaken.* By the said sir P. Leycester. Anno Domini 1674.
7. An Advertisement to the Reader, by sir P. Leycester. 3rd March 1674.
8. An Answer to Two Books, the first being styled, *A Reply to sir Thomas Mainwaring's book entituled An Answer to sir P. Leycester's Addenda.* The other styled, *Sir Thomas Mainwaring's Law-Cases Mistaken*, written by the said sir T. M. London, 1675. 12mo.
9. A Second Reply to sir T. Mainwaring's *Answer* to my Two Books, written by sir Peter Leycester, baronet. A.D. 1675. 12mo.
10. "Peroratio ad Lectorem," by sir P. Leycester. Dated Dec. 17, 1675.
11. The Case of Amicia Truly Stated, by sir *Peter Leycester*, baronet. August the 5th, MDCLXXV. Printed in the year 1676.
12. An Admonition to the Reader of sir P. Leycester's Books, written by sir T. M. 1676. 12mo.

13. An Answer to sir T. Mainwaring's book, entituled, *An Admonition to the Reader of sir Peter Leycester's Books.* Written by the same sir P. Leycester. London, 1677. 12mo.
14. A Reply to sir Peter Leicester's Answer to *sir Thomas Mainwaring's Admonition* to the Reader of sir Peter Leicester's Books. Written by the said sir Thomas Mainwaring, but never yet printed [*i.e.* in the writer's life.]
15. The Legitimacy of Amicia, daughter of Hugh Cyveliock, earl of Chester, clearly proved, with full answers to all objections that have at any time been made against the same. By sir Thomas Mainwaring of Peover in Cheshire, baronet. London, 1679. 12mo.

The following may be considered as a general summary of the contents of these papers:

Paper No. 1 is a statement of the case against Amicia, with sir Thomas Mainwaring's temperate answer to it. In law phraseology this paper may be called the declaration.

Papers No. 2 and 4, both by sir Peter Leycester, should be read together. These, which may be called the plea, repeat the writer's first statement and add a few further arguments and illustrations. In these papers the writer, who had taken up a position, seems to have made up his mind to defend it *à l'outrance.* His temper has become warm, and he indulges in some tart expressions towards his opponent.

Papers No. 3 and 5, by sir Thomas Mainwaring, which should be read together, may be called the replication. They contain sir Thomas's Answer to his opponent, and show an intimate acquaintance, on the part of the

writer, with the early chroniclers as well as with ancient charters.

Papers No. 6 and 7 may be called sir Peter Leycester's rejoinder. In these he repeats the arguments he had used before, and writes as if growing impatient with his opponent.

In paper No. 8, sir Thomas's surrejoinder, he reinforces his old arguments by some few which are new. Here he resents sir Peter's sneers, and writes satirically.

Papers No. 9, 10 and 11 may be called the rebutter. In these sir Peter retraces his old ground, tries to strengthen his position, and repeats many of his former arguments.

In paper No. 12, which may be called sir Thomas's surrebutter, he combats sir Peter's arguments and reenforces his own.

Paper No. 13 is in the nature of a demurrer by sir Peter to his adversary's law.

Papers No. 14 and 15, which conclude the series, may be called sir Thomas Mainwaring's summing up of the whole case to await the judgment of the reader.

Sir Peter Leycester having stated in his *Historical Antiquities* his opinion that Amicia, the wife of Ralph Mainwaring, was not earl Hugh Cyveliok's lawful daughter, sir Thomas Mainwaring, her descendant, accepting it as a call to him to take up the lady's cause and to prove sir Peter mistaken, immediately published his *Defence of Amicia*, and the parties at once came to issue.

Sir Peter averred :

1. That Amicia was not the earl's daughter by his wife Bertred.
2. That it was not enough to suppose she might be his daughter by a former wife, but that it must be proved, "or from solid reason" strongly to be inferred, that the earl had a former wife, and that Amicia was his daughter by such wife.
3. That it is on record that, by his wife Bertred, the earl had a son and four daughters, who were afterwards his coheirs, and carried away all his lands.
4. That whatever is given in frank marriage is given as a portion, and that a release of the service of a knight's fee could not be a competent portion for a legitimate daughter, and she an eldest daughter (such an eldest daughter being always more worthy than the second, and the earl's four daughters by Bertred being married to four of the greatest earls in England).
5. That our ancient historians, *Polychronicon* written by the monk of Chester, Henry Knighton the monk of Leicester and others, as well as Camden and Stow, and the record of 18 Henry III., have recorded earl Hugh's lawful daughters and coheirs, and if Amicia had been legitimate it is not likely all these writers would have omitted her, or that they would have observed such an *altum silentium* respecting her.

The mother of strife, though, like mischief, no bigger than a midge's wing, may grow to a very great matter. Sir Thomas Mainwaring, who was ready with his answer, rested his ancestress's vindication on these reasons — and sir Peter found in him "a foeman worthy of his steel:"

1. That Ralph Mainwaring was no unequal or disparaging match for even a lawful daughter of the earl, who at that time was neither a coheir presumptive of either him or his son, she being only of the half-blood to her brother and sisters.
2. That Ralph Mainwaring, the husband of Amicia, was by no means an inconsiderable person, having the inheritance from his ancestors of the whole or parts of nineteen manors in Cheshire and elsewhere, and being also the judge or justice of Chester, an office of high rank and great importance.
3. That, unlike her half-sisters, who were married after their father's death, and only acquired their great fortunes after the death, without issue, of their brother Randle, Amicia was married to Ralph Mainwaring in her father's life-time.
4. That several years before, three eminent judges and four heralds, having been consulted on the case, had given it as their opinion that Amicia was legitimate, and that a chief justice of the Common-pleas, and a lord-keeper of the seals, with two other heralds who had been consulted since, had given a similar opinion.

5. That in his gift to Ralph Mainwaring *in libero maritagio* with Amicia, the earl expressly calls her his daughter (*filia mea*), while persons of the greatest local rank and quality are witnesses of the gift — R. abbot of Chester (*probably Robert, who became abbot in* 1174, *and who survived the earl*), Bertred (*the earl's countess*), Bertram (*de Verdun*), his chamberlain, and eleven others.
6. That afterwards, when Ralph Mainwaring made a gift to Henry de Aldithley *in liberum maritagium*, with his and Amicia's daughter Bertred, the consideration in which Ralph was held is shown by his gift being witnessed by earl Randle, Amicia's half-brother; by Hugh, earl of Ulster; by Philip de Orreby, then judge or justice of Chester; and thirteen other persons.
7. That in his gift *in frank almoign* to Deulacresse, Roger Mainwaring, Amicia's son, expressly calls the late earl Randle his uncle, "*quondam comitis Cestriæ et Lincolniæ avunculi mei.*"
8. That the common law never at any time allowed a gift *in libero maritagio* to be made with an illegitimate daughter, she not being *de sanguine patris.*
9. That the intimate relation in which Ralph Mainwaring stood to earl Hugh is shown by his accompanying him on all occasions when he visited his distant possessions; that he was with him at Coventry, and witnessed his charter to the burgesses

there; that he witnessed also his confirmation of Calk priory in Derbyshire and another of his deeds, besides three other deeds of earl Randle's (all which deeds are given in the *Historical Antiquities*). That Roger Mainwaring and Henry de Aldithley, his sister's husband, witnessed earl Randle's gift *in frank almoign* to Dieulacresse, and that Henry de Aldithley also witnessed a deed of Robert de Ferrars, whose mother was one of earl Randle's sisters and coheirs.

10. That to prove what was done long ago much less evidence is sufficient than to prove what was but lately done. That the earl having called Amicia *his daughter*, she must be presumed to be legitimate, and her not being his daughter by Bertred by no means proves that she was not his daughter by a former wife.

11. That if all those persons in the olden time whose fathers we cannot prove to have been married must be held to be base-born, most of the great persons who lived in the first and second centuries after the Conquest must be so accounted. Thus, to give an instance, it is very hard, nay impossible, now to tell who were the wives of Walter Gifford first earl of Buckingham, John of Henalt earl of Cambridge, and very many other personages who made a great figure in their own day.

12. That (which shows still further the high consideration in which he was held) Ralph Mainwaring,

the justice, in Alan de Boidele's grant to his brother, is named as a witness immediately after earl Randle, and before either sir Robert de Montalt, the steward, or any other of the witnesses.

13. That (which shows the same thing still more strongly) in sir Robert de Montalt, the steward's, gift *in frank almoign* to St. Werburgh's, Ralph Mainwaring is named first of the score of witnesses to it. (Of these witnesses, no fewer than four were the same who witnessed the earl's gift to him *in frank marriage* with Amicia.)

14. That though earl Randle Gernons had made the baron of Halton his constable, and expressly given him rank and precedence next after himself and before all other his barons; and though he had created the baron of Montalt his steward, and given him rank next after the constable; Ralph Mainwaring, whenever he was in the presence, was always named as a witness before either of them — a strong presumption that he owed his high standing to his having married the earl's legitimate daughter, and so being accounted a member of the palatine ruling family.

15. That the roll *de Dominabus pueris*, &c., in 30 Henry II. (1183), shows that Bertred was only twenty-four when her husband died, and so, at that time, could hardly have had any child then married or marriageable.

16. That Amicia being called by earl Hugh *his*

daughter in a solemn deed, affords a presumption of her legitimacy so strong that it can only be rebutted by direct proof to the contrary.

17. That the lordship of Henbury (which the earl of Chester held at the Conquest in his demesne) probably came to the Mainwarings upon Ralph's marriage with Amicia, no mention of it being found in connection with the Mainwarings before that time.

18. That, according to Caradocus Lancarvan, Hugh Cyveliok in his father Randle's life-time, and to aid him against the king, fortified Cymaron and won Melyeneth in the year 1142, when he could not be less than twelve years old.

19. That in a charter of Randle Blundeville's, made at a time when he was duke of Britain (a title which he took in 1187, when he married Constance the widow of Arthur, and laid down in 1200, when he divorced her), the *first* witness named is the countess Bertred; the *second*, Ralph Mainwaring, without his title of justice; and the *third*, Ralph de Montalt, the steward.

20. That shortly after his father's death, in 1153, when he must have been of age, earl Hugh Cyveliok granted Stivinghale *in frank almoign* to the bishop of Chester.

21. That in the time of king Stephen, and consequently before the year 1154, when that king died, earl Hugh gave lands *in frank almoign* to

the nuns of Bolington, and consequently must then have been of age.

22. That the *altum silentium* of the *Polychronicon*, Henry Knighton, the monk of Leicester, Stow, Camden and the rest, is no presumption against Amicia's legitimacy in the face of earl Hugh's charter, in which he expressly calls her his daughter, against which nothing should prevail except positive proof. Besides which, all the old historians except John Bromton (whom sir Peter Leycester has unaccountably overlooked) have omitted to mention Matilda, who married David earl of Dee, and who was one of the daughters of Randle Meschines.

23. That there was a great disparity of age between earl Hugh and his countess Bertred, he having been born about the year 1129 and she not until 1157, whence there arises a strong presumption that he, being so great an earl, would not have remained unmarried till Bertred was marriageable, and consequently that he had been married before.

24. That if Matilda, earl Hugh's mother, whose parents were married in 1110, was not born until 1135, she must have been born a quarter of a century after the marriage of her father and mother, which, though possible, is most improbable.

25. That another proof that earl Hugh was older than sir Peter supposed him to be, exists in the fact that he was called as a witness, and signed as

"*Hug. Com. Cestr.*," the agreement between the king and the men of Flanders as to their services, in 1163, when he must have been more than of age. (Dugdale's *Baronage*, p. 40, and Rymer's *Fœdera*, vol. i. p. 23.)

26. That before the year 1167 earl Hugh confirmed a grant to the nuns of Greenfelt.
27. That in the *Gesta Stephani Regis*, under the year 1141, earl Randle Gernons, *cum uxore et filiis*, is expressly stated to be then in Lincoln castle.
28. That Hugh Cyveliok and his brother Richard are both mentioned by Willielmus Gemeticensis under the year 1135, which is a further proof that Hugh Cyveliok was older than sir Peter supposes.

There was one question debated more than any other during the Amicia controversy, which was whether, in the time of earl Hugh Cyveliok and his cotemporary Glanvil the king's justiciary, lands could or could not be given *in frank marriage (in libero maritagio)* with an illegitimate daughter, it being admitted as undeniable on both sides that, as the law stood in and after sir Edward Coke's time, no such gift could be made. Sir Peter Leycester, who evidently found it difficult to gainsay his opponent's allegations as to the earl's age, fell back upon the point which he had raised, that the law, which in sir Edward Coke's time forbade any such gift, was not the law in the time of Glanvil, and upon this point he put this question in his address to the judges :

An non sæculo Glanvilli ex antiquâ lege nostrâ dare terram in liberum maritagium cum bastardâ filiâ suâ cuivis homini liceat, etiamsi mutata lege, donum lex hodie non permittit?

Although the decision of this question in sir Peter's favour would not conclude Amicia to be illegitimate, yet on the other hand, a decision the other way would go far to establish her legitimacy. We need not wonder, therefore, that the question was so strenuously disputed on both sides.

For the sake of its important bearings it is, therefore, desirable to investigate the subject more closely, in order to ascertain, if possible, on which side the truth lies, and with this view, it is proposed to review, as shortly as may be, the several law authorities on the subject, in the reverse order to that adopted by sir Peter Leycester.

Sir Peter, whose opinions, through his appeal to the judges and their opinions, must have been well known, but which have found no favour with our law-writers, and have not been noticed by them, proving that the lawyers did not think there was much in them, began his consideration of the question by citing first the opinion of Glanvil, the earliest of the text writers. We propose to follow a directly contrary course, and to find the fountain by tracing upward the streams which flow from it. Blackstone, one of the latest of our law-writers, lays it down that a gift *in frank marriage (in libero maritagio)*, which *ex vi termini* is a gift in special tail, can only be made to a daughter or cousin of the donor (*Commentaries*, vol. ii. p. 114); and the same thing is asserted, or to be inferred

from the examples given, in the law-dictionaries of Blount, Cowell and Jacob, which mention a sister among the relations. (See *sub voce* Frank Marriage.)

By another law-writer, who wrote about the year 1660, we are expressly told that "no man can give anything *in frank marriage* with any woman but such as is of his whole-blood, as sister or cousin collateral within the fourth degree, so that they may not intermarry by the law." (Hughes's *Grand Abridgement of the Law*, p. 970.)

Another writer on law, whose work appeared in 1632, thus writes on this subject:

> It was more frequent in old time than it is now for men to give lands in marriage with their daughters, but now as then if a man liberally and freely, without money or other consideration save only love and natural affection, give lands to another man with a woman which is a daughter sister or cousin to the donor *in frank marriage*, which word maketh an estate of inheritance to the donees and the heirs of their two bodies, they shall hold quit of all manner of services (except pure fealty) until the fourth degree be past. (*The Laws and Resolutions of Women's Rights.*)

Sir Edward Coke, in whose time, owing to a change in our habits and manners, gifts *in frank marriage* were fast going out of use, tells us that to such gifts the words *in liberum maritagium* are so essential that no equipollent words will create them, since thereby an estate of inheritance is created, contrary to and against the general rule of law; and that such gifts must be made either to a man with a woman or, as some hold, to a woman with a man, and that the man or the woman who is the cause of the gift

must be of the blood of the donor; and he adds a case which shows by implication that a gift *in frank marriage* by the king could only be made to a woman or a man who was of his kindred. (*Coke upon Littleton*, Hargrave and Butler's edition, 1794, p. 21[b].)

Brooke, a great lawyer who wrote in 1576, under the head of "*Frank Marriage*" gives eleven cases.

The first is a gift *in liberum maritagium* with a daughter in 45 Edward III.

The second is in the same words, and mentions the degrees. 12 Henry IV.

The third is a gift by a father with his daughter in frank marriage, and mentions the degrees.

The fourth is a gift by a father with his daughter.

The fifth and sixth are silent as to the relationship, but mention the degrees. The latter is in 15 Henry III.

The seventh gives lands with the donor's cousin.

The eighth says a gift in frank marriage before the statute of Westminster was a fee-simple conditional.

The ninth mentions a gift with the donor's cousin in frank marriage, and mentions the degrees.

The tenth mentions a marriage with a cousin of the donor.

The eleventh is an opinion on frank marriage with a remainder. (*La Graunde Abridgement*, by sir Robert Brooke, 1576.)

The next authority we reach in our upward progress is Littleton, the great lawyer whose name, according to sir

Edward Coke (and this shows the esteem in which he was held), is not that of an author only, but of the law itself.

Littleton, who was a justice of assise under Henry VI., and afterwards a judge of the common-pleas in the time of Edward IV., was the associate and companion of many famous judges and sages of the law, who assisted him in composing his *Institutes* of the laws of England. On this subject we have this great writer's opinion in these words:

> Where tenements are given by one man to another with a wife (which is the daughter or cousin to the giver) in frank marriage, the which gift hath an inheritance by these words (frank marriage) annexed unto it, although it be not expressly said or rehearsed in the gift (that is to say) that the donees shall have the tenements to them and to their heirs between them two begotten. And this is called especial taile because the issue of the second wife may not inherit. (*Coke upon Littleton*, p. 21[b].)

In the thirteenth year of the reign of Edward I. (1285) there was passed the statute of Westminster *the second*, called *De Donis conditionalibus*, for regulating estates tail. This statute recognises gifts *in frank marriage (in liberum maritagium)* as estates in special tail, and expressly distinguishes them from other gifts to a husband and wife and the heirs of their two bodies. It shows that to a gift *in frank marriage* the words *in liberum maritagium* were essential, but in all other respects it is silent and leaves the law as it found it, whence it follows that if before the statute such a gift might have been made with a bastard, the same thing might also have been so made afterwards,

which all the authorities we have cited show that it could not be.

In the same reign, and about the same time, a learned lawyer, whose misfortune it was to be shut up in the Fleet prison, employed his constrained leisure in writing a learned law-book, which from that circumstance he called *Fleta*. This book contains a passage on frank marriage, of which this somewhat long extract is a translation :

There is a certain *frank marriage*, free from all service to be done to the donor or his heirs until the third or fourth degree, and in this manner the degrees are to be reckoned — the donatory makes the first degree — his heir the second — the heir of his heir the third — and the heir of this second heir the fourth — which last, but not any before, shall be held to do service and homage, lest the giver or his heirs, by receiving the homage, should lose his reversion. In the fourth degree, however, since then there is a vehement presumption that the land is not likely to revert through failure of heirs of the donatory, because although he then have no near heirs, or though he have, and they should fail, the land shall never revert to the donor or his heirs who have received homage, nevertheless, if *some person not of his blood* appear and establish a right to the inheritance, then the homage fails and the land shall revert. Also whenever homage shall have been done by one of the blood, thenceforth he shall also do service, for service always follows the homage. (*Fleta*, cap. 11, De Donationibus.)

Some light is thrown on this passage, by a note of lord Hale's, who says that in a gift *in frank marriage* there must be a consideration of blood between the donor and donee ; but he adds there may yet be intermarriage before

the fourth degree, and yet the land shall be holden quit till the fourth degree be passed. (Hargrave and Butler's notes to *Coke upon Littleton*, p. 23[b], and note 1, where Hale's *MSS.* are cited.) Hence it is evident that in such a gift blood was an essential ingredient.

A case in 9 Henry III. is cited by sir Edward Coke, where it is said that if the king give land to a man with a woman of his kindred *in (frank) marriage*, and the husband have no issue by his wife, he shall not hold the land at all after his wife's death, because the wife was the cause of the gift. (*Coke upon Littleton*, p. 22[a], and Fitzherbert's *Grand Abridgement*, Dower, p. 202.) But in the case of such a gift by a common person it is otherwise, for there if the husband once had issue which was heard to cry, a sign absolutely required to prove its being born alive, as the verse has it,

Nam dicunt E vel A quotquot nascuntur ab Evâ.

he was held to be entitled to hold the land as tenant for life by the courtesy of England.

In his celebrated work *De Legibus et Consuetudinibus Angliæ*, which he wrote in the reign of Henry III., Bracton tells us that *maritagium* is sometimes *frank marriage*, that is to say, free from all service, and sometimes *marriage liable to service.* It is called *frank marriage (liberum maritagium)* when the donor wills that the land thus given shall be free and acquitted of all secular service belonging to the lord of the fee, so that he to whom the gift is made shall do no service therefor

until the third heir. (*Bracton*, lib. ii. cap. 7.) In this passage there is a plain allusion to the degrees, which, as we have seen, implies a relationship by blood. And in another place the same author says land may sometimes be given before espousals and because of a marriage, by the father or other relation of the woman, to the husband with her, or to both together, that is to say, to some man and his wife (which is the same thing) and their heirs, or to some woman for her marriage. (*Id.* lib. ii. cap. 7, part 3.) Which again, by fair inference in connection with what he had before said, shows that relationship by blood was required in these marriage gifts, and, by inference, in gifts in frank marriage.

In our quest after authorities we have found all of them, thus far, in accord that to a gift *in frank marriage* the words *in liberum maritagium* or *in libero maritagio*, and some blood relationship between the donor and the man or woman who was the cause of the gift, were absolutely necessary.

Glanvil, our earliest text writer, who died in 1190, now only remains to be considered. Before him lay nothing but the common law, a great wilderness which he had to reduce, and in it there was nobody to follow. We should feel no surprise, therefore, to find he had omitted something. Let us see, however, what he says. In his first chapter on this subject he tells us that any free man having land may give a certain part of it in marriage with his daughter, or with any other woman whatsoever (*cum aliquâ quâlibet muliere*), whether he have or have

not an heir, or even if his heir dissent. (*Glanvil*, lib. vii. cap. 1.) Here, it will be observed, the author is silent as to gifts *in frank marriage*. His next allusion to the subject is more to the purpose, for in it he tells us *maritagium* is divided into *frank marriage (liberum maritagium)* and marriage subject to service. *Frank marriage* is when a free man gives part of his land to a man with some woman (*cum aliquâ muliere*) in marriage, so that it may be free from all service, and be kept harmless by him and his heirs against the chief lord of the fee, and in this liberty the land shall remain until the third heir, nor, in the mean time, shall the heirs be held to do homage for it. But after the third heir the land shall be subject to the accustomed service. (*Id.* lib. vii. cap. 18.)

Here, though we have no express mention of relationship, yet we have mention made of the degrees, which implies it, and we have also the marked distinction on which sir Thomas Mainwaring has remarked, between the expression, *cum aliquâ quâlibet muliere* (with any woman), which was used in treating of marriage generally, and the expression, *cum aliquâ muliere*, meaning a woman of the allowed class — a relation in blood — used in treating of frank marriage.

After this review of the law of gifts in frank marriage, taken from our law-writers, a notice of some such gifts now in the editor's possession may not be out of place, since they add to the rule of law some examples of its practice. These charters, a portion of very many such

gifts, selected from various sources and quite indiscriminately, which have come under the editor's notice, are a fair sample of this class of deeds, and of each of them we may truly say :

Ex uno disce omnes.

In introducing them to the reader's notice we shall take them as we did the law-writers, in reverse order to their dates, beginning with the latest first.

(1.) On the 2nd October 3 Henry VI. (1424), Robert Say gave lands to Hankyn de Stoke and Margaret the donor's daughter, *in frank marriage (liberum maritagium).*

(2.) Robert de Bleckleg, by a charter without date, but probably made about the reign of Edward III., gave lands to Rosamund, the daughter of Philip de Penington, *in frank marriage (liberum maritagium)* with Philip, the donor's son.

(3.) In 1260 Gilbert de Sotheworthe gave lands to Hugh fitz Gilb[t] de Haydock *in frank marriage (liberum maritagium)* with Agnes, the donor's daughter.

(4.) About 1240 Mathew de Bolde gave lands to Gilbert fitz Hugh de Haydoc *in frank marriage (liberum maritagium)* with Alicia, the donor's daughter.

(5.) About the time of Henry III. William de Calverhale gave lands in Calverhale *in frank marriage (liberum maritagium)* to Lawrence, his son, and Matilda, daughter of Stephen de Linyhale.

(6.) About the same time William fitz William Bernard, by the free will and consent of his mother, gave lands *in frank marriage (in libero maritagio)* to Alexander fitz William de Peppelawe with Alina, the donor's sister.

(7.) Yns Moriel, by an early charter, gave lands *in frank marriage (liberum maritagium)* to Madoc fitz William with Alicia, the donor's sister.

(8.) William fitz Henry de Stapelforth, by a charter in the reign of king John, gave lands *in frank marriage (in libero maritagio)* to Wrennock fitz Wyan de Buerton with Eva, the grantor's daughter.

(9.) About the year 1172 Roger fitz Alured gave lands *in frank marriage (in libero maritagio)* to Adam de Dutton with Agnes, the donor's daughter. This charter, almost identical in time with earl Hugh Cyveliok's celebrated gift, calling the lady the donor's daughter, using the same language, and mentioning nothing of her mother, though no doubt has ever been entertained that she was born *sine maculâ*, is very important to this argument. John baron of Halton and constable of Chester confirmed this charter; and the original charter, with the confirmation, are here printed at length, the confirmation being remarkable for the curious obliteration in it of the word *meâ*, which, by mistake, the scribe had used instead of *suâ*.

Roger fitz Alured's gift in frank marriage, about 1172.

Roger[s] fili[s] Alwredi omnibs hominibs suis et amicis Francis et Anglicis clericis et laicis presentibs et futuris Sal'. Sciatis me dedisse et çcessisse et hac presenti carta mea confirmasse Ade de Duttona in libero maritagio cu' Agnete filia mea medietatē Werbe[r]tune quæ est de meo feudo in feudo et hereditate illi et heredibs suis ad tenēdum de me et heredibs meis in bosco in plano in pratis in pascuis in viis in semitis in molendinis in vivariis in piscariis et in omnibs libertatibs et in liberis çsuetudinibs solute libere et quiete ab om̄i servicio et exactiōe michi et heredibs meis pertinenti serviciū forinsecū m[i] et heredibs mei[s] faciendo quantū ꝑtinet ad decimā ꝑtem feudi militi[s] qd ego et heredes mei debemus facere nr̄is capitalibs dominis et si ego vel heredes mei nō poterim[s] predictā terrā predicto Ade vel heredibs suis warantizare Ego vel heredes mei dabimus excambiū predicte terre predicto Ade. et heredibs sui[s] ad valentiā de nr̄a hereditate ꝑp[r]a [propria] et hāc donaciōem çcessiōem et çfirmaciōem feci ego Roger[s] fili[s] Alwredi çcessiōe Will. mei filii mei hereredis [*sic*] His testibs H pōr d' Nort' Joh̄e Constab' Hug. d. Dutt. Ric Fitū Joh' fil' Alwred Will' de Carintū Robt Leon' Rob't Ven' Wrenou Puterl' Giaufrid d' Merigg's H Gamb'l' Gauf' d' Dutt. Gauf' d' Staallee Aufred fil' Lā[n]s Will' d' Boun Fre DD [David] Et multis aliis.

Confirmation of the above Charter.

Scia[n]t om[n]s tā presentes q̄m fut'i me Joh. çst' Cestr' hac presenti carta mea çfirmasse Ad' de Duttoñ terrā q̄m Rogerus fili[s] Aluredi illi dedit cū Agnete filia mea sua in liberū maritagiū scil'. medietatē Werbertoñ cū om̄ibs p'tinenciis libē et q[i]ete sic[t] predicti Roger[i] carta testatur. salvo servicio meo His testibs H. pōr' d' N. Rog' fil' Alured' Ricard' Fituns Hug' d' Dutt' Rob't' Venatore fr̄e D'd.*

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* The charter and the confirmation are in the possession of R. E. Egerton Warburton, esq., of Arley hall.

Hugh Cyveliok, the *fons et origo* of this controversy, seems to have been very unfortunate, for while one of the contending parties would deny him a *daughter*, an old rhyming chronicler, who introduces him with a flourish of trumpets, would give him a *father* who was not his own. Hear what he says:

When great Meschenes was deceased
his sonne Hugh Kevelocke did enjoye
his honour & the same encreased
by valour & by industrye.
he with his power did wales invade
for inrodes which themselves had made
upon his lands & conquered all
Broom feild & greatest part of Yalle.

(*Bishop Percy's Fol. Manuscript*, by the Early English Text society, vol. i. p. 281.)

Was there anything misleading in his name to create this double maim in his lineage, both of the ascending and descending line? Be this as it may however, while it is easy to give back to him Randle Gernons his *father*, it is by no means so easy to restore to him his *daughter*, but before we conclude we shall endeavour to do this also.

Since the two knights crossed lances upon the challenge whether Amicia had a right to bear her shield without a *bar sinister*, history has thrown no new light upon her story; nor, perhaps, after the two champions had examined the old chronicles with so exhaustive a research, could any other result be reasonably looked for or expected.

Only by some unlooked-for chance, the recovery of some forgotten record or some charter *inter vivos*, could we have hoped to find Amicia's mother mentioned as the earl's wife, or even to learn her name, after so long a lapse of time and so many fruitless searches. Considering how perishable all such things are, it is not surprising that even this hope, faint as it was, has also failed us.*

In this respect, therefore, the question rests where the two combatants left it, and, direct proof being out of the question, it only remains for us to see what, if any, further presumptive evidence can be adduced to show on which side the balance of truth inclines.

In the times immediately succeeding the Conquest great men almost always married early, for which, amongst others, there was this reason, that if unmarried when his ancestor died, the heir was liable to fall into the hands of his feudal superior and be treated as his ward, a result which, when he could, the vassal always strove to prevent. At the Conquest William the Norman bestowed the county of Chester on the palatine earl, to hold as freely *by the sword* as he himself held the realm of England *by the crown*, and Hugh Cyveliok's sword, the

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* The following extract may not refer to our Amicia, but it is singular that her name occurs in it in connection with Bertred and Roger:

Essex. Jordun[s] fil. Avic' pet. ver[s] Rogerum fil. Berte i hid tre et xxviij acras cu. pertin. in Crikeshee sicut jus suum et hereditatem quæ ei descendere debet ex parte Amiciæ matris suæ. (*Abbreviatio Placitorum*, i. 72, *incerti temporis t'pe Joh'is.*)

symbol of this tenure, is still preserved, and may be seen by the curious in the British museum. (Preface to *Hist. Cheshire*, p. xxvii.) Whether, if Hugh Cyveliok had been under age and unmarried at his father's death, the crown would have claimed his wardship, may admit of question,* but the then prevailing practice as to wardships, even if it did not affect him personally, would almost certainly have inclined the earl his father to wish to see him married in his life-time.

In that age too all marriages (except where the Church interfered) were effected with great ease and attended with little ceremony, and at a time when there were no registers, and, except when the king's or the earl's license was required to his vassal's marriage, no record was made of them, we rather wonder than expect to find any mention made of marriages; for that was not a lettered age, and the evidence of a marriage was intrusted to the memory of those who were present at it, and who, if any

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* The following extracts seem to imply that the earldom was subject to the usual consequences of tenure:

Rot. Finium, 16 Hen. III. (1232), p. 230.

Mand. est Vic' Buk. qd capiat ī manū ℔ os. tras q'. fu'nt Rann. quondā Com'. Cestr. et Linc et eas lib'et Pet° de Rivall ad respond' inde ad sūm salvis executorib's testam'ti ip'ius com' ōibs catall. et wardis q' ip'e comes habuit ī p'dcis t'ris ad execut' t. sui fac. nisi idem comes aliquā wardā hūit rōe man'ii de Twiford q' debet reman'e ī manu ℔ eo q'd p'dcm man'iū nō debet rev'ti ad hēdes ip'ius com. T. ℔ ap. Oxon xxij die Oct.

Id. p. 235.

I. Com. Cest. et Hunt. unus hēdū R. q'ndam Com. Cest. et Linc. debet ℔ L^{li} p' relevio suo.

Hawis de Cestr' alia hēdū ejusd. Com. debet ℔ L^{li} p' relevio suo.

W. Com. de Ferr' qui h't ī ux'. t'cia hedū p'd'ci Com. debet ℔ L^{li} p. relevio suo.

dispute arose, might be called to prove it. Our ancestors *then*, like the Turks now, seem in some things to have preferred oral evidence to written, though such evidence died with every generation.*

Among the old chroniclers there is an *altum silentium* as to Bertred, the mother of earl Hugh's heir. None of them has mentioned when, where or how she was married, and but for the two records of 31 Henry II. (1184), *de dominabus et pueris*, and 18 Henry III. (1234), *de rationabili parte*, and one or two charters which she witnessed, we had not with certainty even known her name, and might, with Ferne in his *Lacy's Nobility* and Powell in his *Welsh History*, have called her Beatrix, the daughter of Richard Lucy, chief justice of England (p. 8, *post*), instead of knowing, as we now do, that she was the daughter of a great nobleman, and he no less a personage than the count of Evereux,† and this may serve to show us how completely the old antiquaries were at a loss concerning her.

No cotemporary chronicler has attempted to give us any account of all Hugh Cyveliok's wives and children, but neither, on the other hand, has any of them either mentioned Amicia or cast a stain upon her birth, and if

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* In some cases the law required the king's or the earl's consent to the marriage of his vassal or his vassal's widow, and for such license a fine was exacted, but no such license would be required for the marriage of the earl's son, his father being supreme in the county.

† He is called Simon count of Evereux in *Vincent upon Brooke*, p. 105, but no authority is quoted.

it is now impossible to *prove* the earl's marriage with her mother (the evidence having died with the witnesses), so it is alike equally impossible to disprove it.*

Bearing in mind then the tendency of that age to early marriages and the ease with which they were effected, it is not difficult to see that, either in his father's life-time or soon after, Hugh Cyveliok, while still young, might marry Amicia's mother without any record of it being preserved, and that afterwards, having lost her by death, he might take to wife Bertred, the mother of his heir. Does not the care which he took to match Amicia suitably, and to make his own marriage with Bertred the occasion of hers, show his great affection for her, and lead us to infer that she was the beloved child, perhaps the only child, of a wife whom he had lost? Does not this also supply a reason for his raising her husband to high honour, and treating him with such respect as to induce his countess to be his child's godmother and give it her own name? Will it not also account to us for Amicia's son and son-in-law, Roger Mainwaring and Henry de Aldithley, calling earl Randle uncle and being so much about his court?

At a time when spurious birth was so little accounted of as to be no disgrace, and when some great persons

* In the *Great Roll of the Pipe*, 1 Ric. I. (1189), p. 223, we have this entry, which, synchronising with the date of Ralph Mainwaring's justiceship, may very possibly refer to *Amicia*, there being at the date no daughters of the earl of Chester, except her, who were not then infants:

P. Pelliciis variis ad opus filiæ comitis Gloec^{r} et filie comitis Cestr. Lxxiij^{s} iiij^{d}

assumed it as a personal distinction, it seems little likely that if any stain had rested on her birth, the earl, in a solemn deed, would simply have styled Amicia his daughter. When William the Conqueror, in an age of *sobriquets*, defiantly styled himself *Bastardus*, he meant it not merely as a personal distinction, but to intimate that he intended to found a kingly dynasty. His sons, William, Robert and Henry, did but imitate their father when they took their respective *sobriquets* of Rufus, Curthose and Beauclerc.

The before-mentioned record of 18 Henry III., in which, after the death of earl Randle Blundeville, his heirs impleaded John Scot (p. 371, *post*), distinctly shows that Hugh Cyveliok's children (of whom Amicia was not one) were earl Randle's coheirs, though the old heralds, including Camden, had given the sanction of their authority to the notion that Amicia also was a daughter of Bertred, and this notion, so subtle is error and so far and wide does it flow, is actually repeated without contradiction in the last edition of Collins's *Peerage*. (Collins's *Peerage*, Brydges's edition, vol. iv. p. 27.)

To sir Peter Leycester belongs the credit of having discovered the above roll, and in the very pardonable pride of such a discovery, he rather too hastily came to the conclusion that, because Amicia was not a daughter of Bertred nor one of earl Hugh's heirs, she was not, and could not be, his daughter by any other wife. His words are :

In the roll there is no mention of Amicia claiming any part or any from or under her in the record, besides all antient authors of those times ..... would not have omitted her among the rest which they have set down had she been a coheir which she must needs have been had she been legitimate (p. 8, *post*).

Meanwhile he forgot that, how lawful soever Amicia's birth might be, she was, by that well-known rule of law which then prevented the half-blood from succeeding, debarred from becoming heir, either to her father or her brother, whilst there were heirs of the whole-blood to succeed them. But as sir Peter is entitled to the credit of first discovering this record, so to sir Thomas belongs that of correcting his opponent's law, and of thus proving himself the better lawyer of the two.

Sir Peter Leycester pressed his doctrine of the *altum silentium* of the old historians far beyond its proper bounds, for if their silence is to be taken as proof we must abandon much that we know, not only as to who were the wives and children of many historical personages in early times, but also many circumstances concerning some of the personages we know. *Multi viri fortes ante Agamemnona*, though an old, is still not an obsolete observation, and Cheshire history would lose many a name if we could only prove its annals from the printed chroniclers.

Nigel, the noble Norman on whom Hugh Lupus first conferred the barony of Halton, a great man in his day, probably died fighting his master's battles on the Welsh border. He had disappeared, however, before

the Domesday survey, and no chronicler has either recorded his achievements, or told us whom he married, or when or where he died. We only know that he left a son, William fitz Nigel, by whom he was succeeded, and who became the second baron of Halton, and to whom the Domesday survey ascribes the long roll of manors and possessions which, doubtless, once called his father Nigel lord.

The information of the chroniclers, too, is often fragmentary and disappointing. This is the case with the charter of Randle Gernons by which he refounded Trentham priory. Its substance is given in the *Monasticon*,* but neither there nor elsewhere do we find who were the witnesses to it. Amongst these, if we had had them, we might have found the name of Hugh Cyveliok, which would have supplied an important date. John of Trentham, a frequent witness of Hugh Cyveliok's charters, was probably its first prior, but here also the *Monasticon* fails us, for it gives us no list of the priors of that house, and consequently we do not know who they were, or the dates of their accession.

These being the principal circumstances which seem capable of being adduced in favour of the lady Amicia's claim to be born in honour, it may be well, before we

* Sciatis me dedisse centum solidatas terræ meæ Staffordiesire Deo et sanctæ Mariæ et omnibus sanctis, ad restaurandum quandam abbathiam canononicorum in ecclesiâ de Trentham et eas assigno de Trenteham unde rex habuit centum solidos. (*Hist. Cheshire*, vol. i. p. 25; Dugdale's *Mon.*, vol. ii. p. 250.)

sum up the evidence, to notice some few opinions which previous writers have left us upon the case.

If her contemporaries were silent respecting Amicia, the moderns might seem to have had their example before them, for they have hardly been more communicative. Camden, whose words have been already quoted, calls her Hugh Cyveliok's daughter, and never intimates a doubt that her birth had any stain. Dugdale, who was master of the whole case, states his belief that she was earl Hugh's daughter by a wife whom he had married and lost before marrying Bertred. (*Baronage*, vol. i. p. 41.) And Anthony Wood says for himself he agreed with the judges who heard the case (it could hardly be judicially) at the assizes in 1675, and then decided that the right lay with sir Thomas Mainwaring. (Wood's *Athenæ*, vol. iii. col. 1173.) The assizes at which the case was heard must have been those held at Chester before sir Job Charlton, chief justice of Chester, and afterwards speaker of the House of commons and a judge of the common-pleas, and George Johnson, puisne justice of Chester. The case which they had to hear and decide involved as much law as history, and when they heard it they doubtless had before them sir Peter Leycester's book called *Sir Thomas Mainwaring's Law Cases Mistaken, or the ancient law misunderstood and the new law misapplyed*, which was published the year before, and contained sir Peter's views at length (p. 249, *post*), and to which book was prefixed a Latin preface appealing to the judges for their opinion.

Rawlinson, in his *English Topographer*, is very short, and only says:

> Upon account of some passages in the *Historical Antiquities*, an historical contest commenced between sir Peter Leycester and sir Thomas Mainwaring, which did not end until sir Peter's death. (*English Topographer*, p. 25.)

In their history of Cheshire published before Dr. Ormerod's, the Messrs. Lysons merely give a passing notice of the Amicia controversy, without expressing any opinion upon it (Lysons' *Cheshire*, p. 750); and which is still more remarkable, neither the author nor the editor of the last edition of Collins's *Peerage*, inviting as the subject was, takes any notice of the Amicia warfare, but passes it with an *altum silentium*.

Dr. Ormerod, the learned author of the *History of Cheshire*, and very justly an admirer of sir Peter Leycester, could hardly allow this subject to pass without notice, and after enumerating the several printed tracts of the two champions, he thus expresses himself:

> The essential question relative to the possibility of giving lands in frank marriage with a bastard, was long argued, with great ability, on the part of sir Peter Leycester, but some of his arguments are ascertained to rest on the authority of incorrect transcripts, and it is probable that few will read the last book of his opponent without allowing the victory to sir T. M. The opinions of the greater part (if not all) the judges who were consulted were given in favour of Amicia's legitimacy, and the authorities of the College of arms have also been in her favour, under the express sanction of sir William Dugdale. (*Hist. Cheshire*, vol. i. p. 32, in notis.)

But let us see what are the facts we possess towards fixing the age of Hugh Cyveliok.

Robert earl of Gloucester and Mabel, Robert fitz Hamon's daughter, the grandfather and grandmother of Hugh Cyveliok, were married in 1109. More fortunate than most great people of that age, they had a poet to celebrate their marriage, who, after telling us in homely terms how the lady stipulated for a coronet for her lord, ends his story by giving us, in verse, this date of their marriage:

> This was end leve hundred yeer in the nith yeer right
> After that ure Louerd was in his moder a hight.
>
> Selden's *Titles of Honor*, p. 647.

There was issue of this marriage two daughters and four sons. Maud, the younger of these daughters, who is supposed to have been born in 1112, became, about the year 1127, the wife of Randle Gernons earl of Chester, and Hugh Cyveliok, their first son, is supposed to have been born about the year 1129.

In 1141 we read of him as being with his father and mother in Lincoln castle, and in the same year his father, being in danger of a surprise by the king, escaped from the castle, carrying probably his son with him (pp. 537–8, *post*), for in the next year, being twelve years old (the same age at which Hotspur and many other young nobles in old time made their first essay in arms), we find that in order to create a diversion in his father's favour, he took the castle of Cymaron and won for himself Me-

lyeneth, a part of Radnorshire, situated on the Wye. (*Caradoc of Lancarvan*, Englished by Humphry Lloyd, Wynne's edition, 1697, p. 197.)

Hugh Cyveliok probably came of age in the year 1150, and then, or before, he most probably married Amicia's mother.

In the year 1153, Randle Gernons having died of poison administered by William Peverel, his son Hugh Cyveliok succeeded to the earldom of Chester.

The following year he made that charter to the nuns of Bollington which sir Thomas Mainwaring shows to have been made before the death of king Stephen, and therefore, at the latest, in or before the year 1154 (pp. 313–14 and 529, *post*). So confident was sir Peter Leycester that this charter was not made in king Stephen's time, that he threw out this challenge to his antagonist: "Let him prove this deed to have been made in that reign and I will burn my book."*

The charter which he joined his mother in making to Stivinghale for the repose of his father's soul, who had died excommunicated, was certainly made in the life-time of the constable Eustace, who died in 1157, and it was probably made a few years before (p. 532, *post*).

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* The reader of that amusing book *The Pleader's Guide*, will remember that one of the advocates there threatens to burn his books if they did not confirm the law as he stated it, upon which his learned opponent recommends him to *read* them first. (*Pleader's Guide*, p. 210.) Had the lawyer who wrote this pleasant book seen sir Peter's challenge to his adversary?

In 1163, when the king made an agreement with the count of Flanders, and another agreement with the count's men, the earl of Chester witnessed and signed both as "*Hug. Com. Cestriæ.*" (Rymer's *Fœdera*, vol. i. p. 23.)

In 1167 Hugh Cyveliok confirmed his father's gift *in frank almoign* to the nuns of Grenfelt, and directed the charter to Robert de Chisney, bishop of Lincoln, who died in the above year (pp. 535–6, *post*).

Before the year 1171 he must have lost Amicia's mother, for in that year he took to wife Bertred, the daughter of Simon* count of Evereux. (*Hist. Cheshire*, vol. i. p. 27.) Bertred was born in 1157, and consequently was fourteen years old at the time of her marriage. (*Roll de Dominabus et Pueris*, 31 H. II.)

In the same year, 1171, the earl made his celebrated gift *in frank marriage* with his daughter Amicia to Ralph Mainwaring (pp. 449 and 450, *post*).

But earl Hugh had been educated in rebellion, and it seemed now to be part of his inheritance. He and his father had joined in rebelling against Stephen to make Henry II. king, and now he rebelled again, and tried to unmake the king he had helped to make. In the autumn of the year 1173 he crossed the sea and joined the king's undutiful sons, then in arms against their father, and, on their being defeated, he was besieged and so closely shut up in the castle of Dole in Britany, that on

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* The count is called Simon in *Vincent upon Brooke*, p. 105, but no authority is cited.

the 26th August he was compelled to surrender to the king at discretion. The king, who appears to have thought the four walls of a prison his best bail for the earl's fidelity, shut him up in close confinement, and the next year, when he came to England, he carried his prisoner with him, and when he returned, a few weeks afterwards, he again took him to France. On the 8th December in the same year, the earl, still a prisoner, was one of the nobles called in to sign the king's treaty with the king of Scots at Falaise. In January 1177, and not before, the king released him, and restored to him all his possessions. (Henry's *Hist. England;* vol. v. pp. 151 to 164; and Rymer's *Fœdera*, vol. i. p. 31.) Thus it appears that the earl was absent by constraint from his dominions from August 1173 until January 1177, during all which time the palatinate was probably administered by a crown commissioner.

The various dates which have been given afford strong presumption that the earl was born in or about the year 1129, and consequently that he was more than forty years old when he married his countess Bertred, who was then only fourteen years of age; but what is still more important, they show to an absolute certainty that, when he married Bertred, his daughter Amicia was of marriageable years, and was then given in marriage to Ralph Mainwaring.

But the question still remains — *Was the lady Amicia legitimate?*

In the gift in frank marriage which the earl her father made with her to Ralph Mainwaring, he calls her *filia mea* (my daughter), with no reference to any taint or stain upon her birth, while the witnesses to the charter are the earl's highest ecclesiastical dignitary, "R." abbot of Chester (probably Robert fitz Nigel, son of the first baron of Halton, who died in 1174),* Bertred the earl's countess, and twelve other witnesses, amongst whom was the earl's chamberlain; an array which bespeaks the importance of the occasion, and the earl's opinion that in giving her to Ralph Mainwaring, descended from a fellow-soldier of Hugh Lupus, and the possessor of the whole or the greater part of seventeen Cheshire manors, besides other possessions elsewhere, he was giving his daughter to a husband of suitable rank.

The words of the earl's gift, *filia mea*, should be especially noticed. They are the very same that are used in all the other numerous gifts *in frank marriage* with a daughter from the very earliest times. They are used in the gift *in frank marriage* of Roger fitz Alured, which has been given, and which is almost contemporary with the like gift of earl Hugh with Amicia. If, with these words, we are to illegitimatise Amicia, we must illegitimatise all the other objects of similar gifts, for the words are the same, and rarely, if ever, is the mother of the daughter named in a gift in frank marriage. Sir Peter Leycester said it was rare to find a family not stained

* *Hist. Cheshire*, vol. i. p. 213.

with illegitimacy in some of its generations, but if his construction of the gift with Amicia be allowed, a gift in frank marriage would be itself a stain, and the families not illegitimatised would be reduced to fewer still.

In or about the year 1172, when a daughter was born to Ralph Mainwaring of his marriage with Amicia, she was carried to the font, and there she received the name of Bertred, after the countess, who was probably her godmother.

Afterwards, probably in the year 1177, Ralph Mainwaring was made justice of Chester, an office which he continued to hold until the third or fourth year of Richard I., or even longer. While he held the office he attended the earl to Coventry (p. 33, *post*) and witnessed his charter to his burgesses there, and he also attended the earl on other occasions on his visits to his distant possessions. The former earls, in directing their charters to their officers, had addressed them either to their constable and steward, or their constable, steward and justiciary or justiciaries; but Hugh Cyveliok, who in Stephen's reign had directed his charters to his constable and steward, afterwards, in the year 1178, directed them to his justiciary, constable and steward, while his successor, Randle Blundeville, after the year 1200, directed them to his constable, steward and justiciary. But whatever the address used in the charter, even after the year 1200 (*Hist. Cheshire*, vol. i. p. 33), when he had ceased to be justice, Ralph Mainwaring is always named as a witness before the constable or the steward, though each of them had a patent

of precedence before all his other barons and officers. In Randle Blundeville's charter, too, his name as a witness comes next after the countess Bertred's. Does not all this serve to show that, independent of his judicial position, Ralph Mainwaring had a high place in the earl's court as a member of his family? (pp. 148–9, 306 and 454–5, *post.*)

Afterwards, when he had ceased to be justice of Chester, and he in his turn had to make a gift *in frank marriage* with his daughter Bertred to Henry de Aldithley,* the gift was witnessed by earl Randle Blundeville, Hugh earl of Ulster, Philip de Orreby, then justice of Chester, and thirteen others; another proof of the high regard he enjoyed with earl Randle his brother-in-law (pp. 19 and 450, *post*).

After the death of earl Randle, when Roger, Ralph Mainwaring's son, made a gift *in frank almoign* to the abbey of Deulacresse for the repose of the earl's soul, he expressly calls the late earl his uncle (pp. 20, 21 and 450, *post*).

The presumption arising from all these charters that Amicia was born in honour is strong. But combined with what has already been proved, that a gift *in frank marriage* could not at that time be made with any but a daughter born in wedlock, this presumption becomes irresistible, and the reader will be readily inclined to

* An authentic pedigree of the Audleys states that this Henry was the builder of Heley castle, and that in 24 Henry III. (1240) he founded Hilton abbey, and that his wife Bertred was buried there.

concur in opinion with the judges who heard the case, and decided that the right lay on the side of sir Thomas Mainwaring, Amicia's defender.

In the address prefixed to his last tract, written, but not published, before his opponent's death, sir Thomas Mainwaring, in order to justify himself in having the last word, after quoting sir Peter Leycester's language, who had said "*he had done if I had done*," goes on to say :

> I looked upon this to be as much as if he had said he would never have done so long as I did write, upon which I was put to a stand and did not well know what to do, for as I considered, on the one hand, that I had the honour to be the lady Amicia's heir male, and that not only most of the great families in England, but also, *absit verbo invidia*, our most gracious sovereign,* but many other great kings and queens, did come out of her loins, and that therefore I was bound in duty to use my endeavours to clear her herein ; so, on the other hand, I concluded that if I did continue writing I should perpetuate the controversy, which I was wholly unwilling to do, and I did therefore resolve, as far as in me did lie, that nothing more of mine should be published in the life-time of sir Peter, whethersoever he did outlive me or not.

Among his reasons for continuing the defence of his ancestress, sir Thomas Mainwaring having thus stated, not as mere matter of opinion or conjecture but as a positive fact, that king Charles II., the sovereign then on the throne, was one of her descendants, the reader

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* Charles II., who was then on the throne.

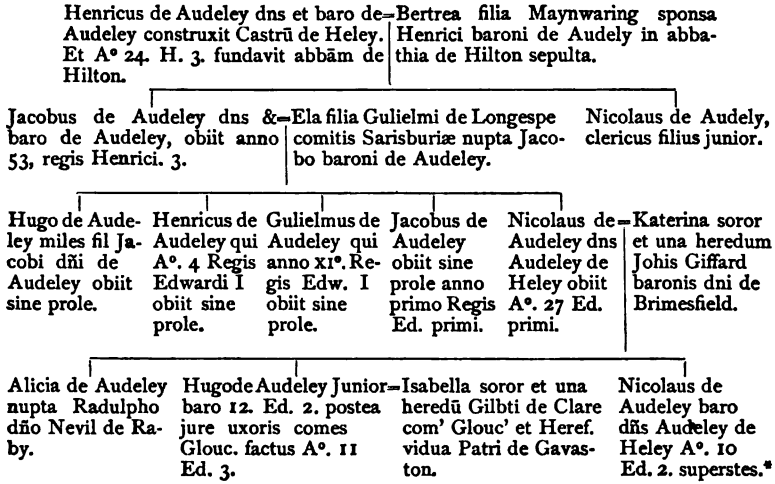
will wish to see how, and by what link, the majesty of England and the house of Mainwaring became connected in their pedigrees. It was well known that the royal family of Scotland, and through them king Charles II., were descended from the marriage of David earl of Huntingdon with Matilda, Amicia's sister of the half-blood, but the way in which the same monarch was descended from Amicia, which has never before been explained, we shall now endeavour to show by extracts taken from the pedigrees of the noble families of Audley and Nevile.

The former of these extracts, taken from the Audley pedigree, which brings down the family to their marriage with Nevile, is taken from an original and very beautiful pedigree on vellum, enriched and emblazoned at every step with the arms. It has been drawn up by some herald for George Tuchet, baron Audley de Heley, "*qui nunc est* 1597," which serves to fix its exact date.

The following is the title of this pedigree:

Stemmata et Propagationes antiquæ familiæ Tuchetorum de Whitley Tuchet in comitatu Palatino Cestriæ ex qua incliti heroes Gulielmus dominus Tuchet baro nobilis regnante Edwardo rege Angliæ post Normanicum conquestum primo ac etiam Georgius Tuchet miles hodiernus baro de Audeley de Heley totius generis splendor et decus continuata masculorum successione recte derivantur Quibus ad latera aliorum quoq' magnatum adjunguntur stemmata quorum arma sive insignia gentilitia simul cum prædiorum portionibus fœminarum hæredum jure in hanc familiam transmigrarunt Tuchetorum cognomen in chartis veterioribus Tuchet Tuschet et Thucet, Tochet Touchet et Touschet diversimode [*sic*] scribi reperitur.

The following is the extract from it:



In this pedigree Thomas Brooke esq. of Norton is put down as having married Anna, the sister of George lord Audley, and the pedigree, which seems to have been his property, has descended with the estate, and is now the property of the present possessor of Norton, sir Richard Brooke bart. With this pedigree, made just before his own time, so ardent a genealogist as sir Thomas Mainwaring, who shared the politics of the head of the house of Norton in his day, could not but be well acquainted. This pedigree, as we have seen, brings down the line of the Audleys by direct descent from the lady Amicia to Alicia de Audley, who married Ralph de Nevile.

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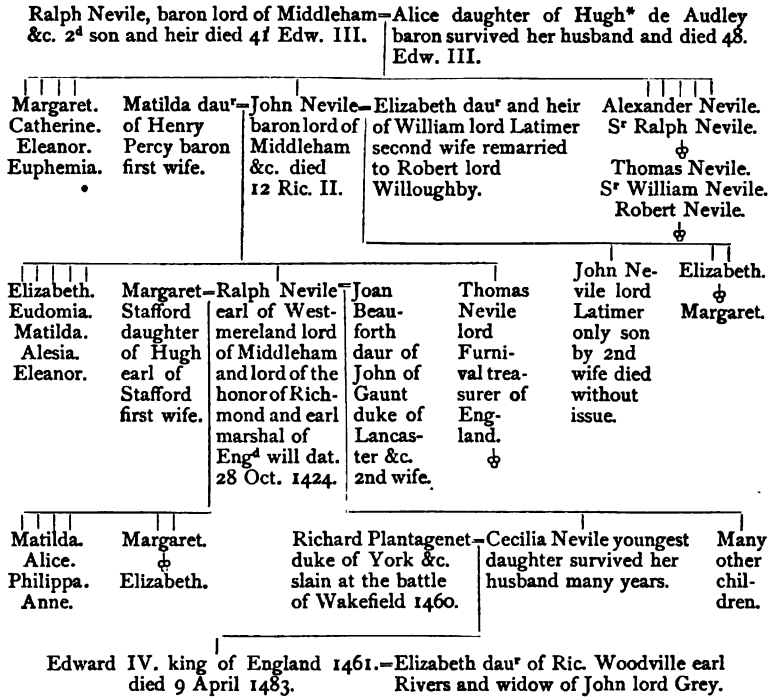
* From the original pedigree in the possession of sir Richard Brooke of Norton, baronet.

The Nevile pedigree, from which we take our next extract, and which has appeared in print, is called: "The descent of the lords of Middleham, from the time of king William I. to king Richard III." This pedigree is certified to be extracted from the books and records of the College of arms, London.

The following is the extract from it:



(Pedigree of the Lords of Middleham. — Whitaker's *Hist. of Richmondshire*, vol. i. p. 330.)

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* The Audley pedigree, which is probably more correct, calls her the daughter of Nicholas. The Nevile pedigree, as printed here, has been contracted in the collateral lines to gain space.

Joined with the Audley pedigree, the above extract shows without dispute that through the marriage of Ralph de Nevile with Alicia de Audley, king Edward IV. was lineally descended from Amicia, and the descent of our kings from Edward IV., being matter of public history, needs not be shown here.

The pedigree of so great a family as the Neviles, even though it were hid in his time in the archives of the College of arms, could hardly be unknown to so great an antiquary as sir Thomas Mainwaring, who was well known to, and on intimate terms with, sir William Dugdale and the other great heralds of his day, and we may therefore conclude that he was acquainted with its contents, when he asserted, as he did, that Charles II. was lineally descended from Amicia.*

When the two cousins, both lineally descended from the lady Amicia, shook hands before they entered the lists to begin one of the most curious genealogical contests on record, in which sir Peter was to maintain his discovery and sir Thomas his family tradition, they both believed that they were about to contend for the truth. Nothing, said sir Peter, can be both true and false *simul*

* In November 1869 a correspondence took place in *Notes and Queries*, in which a correspondent signing herself "Hermentrude" suggested that a marriage between Audley and Nevile was the probable link which allied the Mainwarings with royalty. The editor had previously suggested eight sources of the alliance, the first of which was Audley and the last Elizabeth of York.

et semel, and therefore, in any argument, strength of reason and good authority must guide us to one side or the other. *Amicus Plato, amicus Socrates, sed magis amica veritas*, yet in contending for truth we may still be *pii adversarii*. His opponent, on his part, declared that as he entered upon the controversy with regret, so he hoped it would not be taken ill if he endeavoured to make it appear that some of sir Peter's charges went upon no absolute certainty, for he believed that it was not of any malice that he was led to cast a slur upon their ancestress, but only a desire to make known his supposed discovery. Thus, although sir Peter was ready to do battle for his discovery and sir Thomas for a lady's fame, each believed that truth, a still fairer lady, was the object of them both.

The real question whether the lady was or was not born in wedlock lay in very narrow compass. All the old chroniclers and historians being silent upon it, the fact was only to be established by such collateral circumstances as were to be found elsewhere, and by the presumption necessarily arising from them. But this issue, so simple at first, and so capable of being compressed into a small space, expanded as the controversy proceeded, and gave birth to other issues, which drew the combatants aside, and, at times, almost obscured the real point in dispute.

One of the collateral issues raised was whether Geva, a daughter of Hugh Lupus and ancestress of the Bassets, was not *base* born. To prove that she was not born of

Ermentrude, who, he said, was the only wife of Hugh Lupus, and the mother of Richard, his only son, sir Peter, respecting this son, quoted the words of Ordericus, "*quem solum ex Ermentrude genuit;*" upon which, after remarking that there was no necessity to take the word *solum* adverbially, and that, although sir Peter had so marked it, it was not marked so by Ordericus, sir Thomas contended that it might mean, not that Richard was Hugh's only child, but merely his only son. Some ink was spent upon this part of the question which the grammarians, who would be of a contrary opinion to sir Thomas, would now think was uselessly spent. But that there should have been this early suspicion of a tainted birth in the Bassets is remarkable, since, even in modern times, a charge of the same kind has been made against an early member of that family. Early in this century it was alleged that Isabel, daughter and heiress of Ralph, son and heir of Ralph last lord Basset of Drayton, who died in 36 Edward III., was illegitimate; but an able genealogist undertook to disprove the charge, and he entirely refuted it by the record taken in the time of Richard II., after the death of the last lord Basset. (Collins's *Peerage*, Brydges's edition, 1812, vol. iv. p. 9, in notis.)

Another question incidentally raised, and argued at great length, was whether Joan, the wife of Llewellyn prince of Wales, was the lawful daughter of king John. Misled by the old chroniclers, sir Peter Leycester at first

supposed that she was the same person who afterwards married Robert de Audley, but his antagonist having produced a record to the contrary, he acknowledged his error and gave it up. He still, however, maintained, notwithstanding she had a gift *in frank marriage* from her father when she married Llewellyn in 1204, that she was the king's daughter born of a daughter of the house of Ferrars. Afterwards he proceeded to say, in the words of Mathew Paris, that in 1230 "Willielmus de Braus vir nobilis et potens, a Leolino principe Walliæ patibulo suspensus est mense Aprilis cum uxore suâ (scilicet Leolini) ut dicebatur in adulterio deprehensus" (*Mat. Paris*, p. 365); all which sir Thomas Mainwaring answered by showing that Joan could not be the daughter of a daughter of the house of Ferrars, but was almost certainly the lawful daughter of king John by his second wife, Hawise, daughter of William earl of Gloucester, whom he married in 1176, and from whom he was afterwards divorced.

The story of her infidelity with William de Braus, after having lived with her husband twenty-six years, seems very strange, and is hardly to be reconciled with the great honour the prince her husband paid to her remains after her death in 1237, when he buried her on the sea-shore of Anglesey and built a house of bare-foot friars over her grave.* In this skirmish the advantage lay with sir Thomas Mainwaring.

* At Aber, near Bangor, there is a high and steep mound, where it

To prove a date which was material sir Thomas Mainwaring produced a roll from the *Monasticon*, in which "William" archbishop of York and "R." bishop of Chester were named as contemporaries, and he showed from the coincidence of these names that a charter named in the roll must have been confirmed by Randle Gernons, and not by Randle Blundeville. Sir Peter Leycester at first contended that the names "Will." and "R." were both misprinted in the roll, and that there was no archbishop of York named William and bishop of Chester named "R." living at the same date, either in the time of Randle Gernons or Randle Blundeville. Afterwards however, being obliged to modify this opinion, he admitted there *was* then an archbishop of York named William* contemporary with Roger de Clinton bishop of

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is said William Braus was hanged, and an old tradition has handed down these lines as the prince's question to his wife and her reply:

Q. Lovely princess, said Llewellyn,
What will you give to see your Willyn?

A. Wales and England and Llewellyn,
All these I'll give to see my Willyn;

upon receiving which answer the prince, it is said, led her to the mound, and there showed her the body of William Braus hanging on the fatal tree. These old stories are full of difficulties, and are not easily reconciled with history. Possibly William Braus's life was forfeited for some other offence, and not for defiling the prince's bed.

* Archbishop William was William Fitzherbert, afterwards canonized as St. William of York. He was elected in 1143, and remained archbishop *de facto* until 1147, when he was deposed until 1153, at which time he received the pall. He was contemporary with Roger de Clinton

Chester, but that the archbishop had not at that time received the pall. In this skirmish also sir Thomas Mainwaring showed himself the better fencer, by proving that William and Roger were contemporaries, and that William was *de facto* archbishop of York.

Each of the combatants was well-read in old charters and manuscripts, and showed great learning and an intimate acquaintance with the old text-writers, chroniclers and historians. Their language was terse and to the point, and their reasoning good; but their fault was that they repeated the same thing often. They fought earnestly, and they fought so long, that the amenities which at first distinguished their passage of arms, vanished as the contest lengthened. Some irritating expressions fell from one or the other, and the bright armour of each was smirched with wounds inflicted by his own weapons upon himself.

We have before remarked that no contemporary correspondence has been found to throw light on this controversy. The combatants were too much in earnest to jest on the subject, and consequently there is hardly a joke to be found throughout the whole controversy. One humorist of the time made merry with the dispute in verse, and, as ballads live long and satirical ballads

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at least from 1143 to 1147. The life of the sainted archbishop has been written with great care by canon Raine in his *Lives of the Archbishops of York*, vol. i. p. 220.

still longer, a copy of his production has come down to us, and will be found below.*

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* *A new Ballad, made of a high and mighty Controversy between two Cheshire Knights*, 1673.

(From the *Ashmolean MSS.*, No. 860, iii. art. 1, and No. 836, art. 183.)

Two famous wights, both Cheshire Knights,
Thomas yclep'd and Petre,
A quarrel had, which was too bad,
As bad as is my meetre.

Neere kinsmen were they, yet had a great fray,
Concerning things done *quondam;*
I think as long since as Will Rufus was Prince,
E'en about their Great-great-grandame.

Sir Peter (good man) this quarell began;
Whilst he tumbles ore ancient deedes,
Old women can't have quiet rest in their grave,
So loud he proclaimes what he reades.

When in reading he found (as he thought) good ground
To judge his Grannam a bastard;
Though he blemisht her name, yet it to proclaime
He resolv'd hee'd be no dastard.

But boldly durst say, that AMICIA,
Daughter of Hugh Earle of Chester,
For certaine was born to him by some whore
As sure as his name was Leycester.

To this good intent he vs'd much argument,
The which all such as are willing
Fully to know, let them quickly bestow
Upon his Booke sixteene shilling.

His Grannam's his friend; yet truth hee'l defend,
And little dirt he throws on her,
For as now, so then, among your great men,
A bastard is small dishonor.

Another grandchild, hearing this was stark wild,
The affront he could not disgest,
But takes pen in hand, the same to withstand,
As scorning to fowl his owne nest.

Sir Peter Leycester, who, by the praises of Dugdale and other antiquaries, had been placed upon a high pedestal, hardly expected to find in one who had as yet no name in the roll of antiquaries, an adversary so well

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His Grannam hee'l right, against th' erring Knight,
That slander'd her without warrant:
Who does not his best, to free Ladies opprest,
Is not a true Knight errant.

Hist'ry and lawes he cites for his cause,
With Judges and Heralds, what more?
With these hee'l defy the scandalous ly,
That made him the son of a whore.

They vs'd not their swords, but their pens and foul words,
Which noyse, with other folks laughter,
Could not chuse but awake (to cleere the mistake)
The jolly old Earl and his daughter.

Then vp starts Earle Hugh, and sayes "Is it true—
That I, braue Chester's Earle,
Am summon'd to appeare before Justices here,
As charg'd with a by-blow girle?"

Not another word, but clapt hand on his sword;
While she (gentle AMICIA)
For feare of some slaughter that might come after,
Besought him in patience to stay.

But she told her Grandson, "'Twas vncivilly done
Such a hideous pudder to keep:
Whilst he dreames that folks soules do snort in dark holes
To awake vs out of our sleepe.

"Should it haue been true, that's suspected by you,
Its father was able to nourish
The barne he had got, and sure I should not
Have been any charge to the Parish.

"But you, dear Sir Thomas (much honor be your *domus*),
That my cause so well have defended,
Henceforth leaue AMICIA, both keepe *Amicitia;*
And so let the quarell be ended."

furnished and so well able to use his arms as sir Thomas Mainwaring. His firmness almost verged on obstinacy, and opposition to his discovery, of which he was full, seemed to inflame his desire for victory. Sir Thomas Mainwaring having used some expression against which sir Peter's temper was not armour-proof, he charged his adversary in his next paper with impertinence, or being impertinent, no less than thirty-nine times (unless, as sir Thomas says, his friend who had counted them had miscounted the number). Does not this recall to us the accusation as to mistakes which Scioppius made against Scaliger?

Sir Thomas Mainwaring having quoted from the Latin grammar a part of the rule as to the gender of nouns ending in *a*, "*mascula nomina in (a) dicuntur multa virorum*," to show that some nouns ending in *a*, denoting the offices of men, were masculine, sir Peter, in his reply, sarcastically reminded him he had left out these words of the rule, which he might very well have put in, "*scriba, assecla, scurra et rabula.*" Sir Thomas, though he could not but feel this severe inuendo, took no notice of it, but passed it by with that *altum silentium* which has been already so often mentioned and regretted, but which, in this instance, was a feature to be commended.

Sir Thomas, on the other hand, referring to a passage in the preface to one of his opponent's papers, in which he had told the learned judges that for himself he preferred divinity before all other studies, remarked that it seemed strange, if he were so conversant in that science,

that he had not better "learned his duty to his deceased grandmother, since we are bound to honour all our parents, whether mediate or immediate, and whether they be living or dead;" and he added his opinion that sir Peter would not find a precedent in Scripture where any one did divulge the shame of any person out of whose loins he did descend except that of wicked *Ham*, which pattern, he said, was in some respects exceeded by sir Peter. To this taunt sir Peter meekly replied (p. 353) that he had done nothing like that sin of Ham, and that sir Thomas, in referring to it, was *Kim-Kam** from the point; and he reminded him that he was forgetting his own duty as to revilings (I *Cor.* vi. 10), and not following the pattern of Michael the archangel, who durst not take up a railing accusation against the worst of antagonists (*Jude* 9).

A lately deceased writer (Dr. Turnbull, in the preface to his print of one of the Amicia tracts) says the Amicia controversy was a conflict of family pride. To clear an ancestor from a stain may be an allowable pride; but if it was meant that family pride was the sole motive of the Amicia controversy, we may join issue with him. One of the two champions, sir Peter Leycester, while doing his utmost to depreciate the glory of his ancestral house, could hardly be influenced by any feeling of pride; and, notwithstanding his family leanings, we may give his

* The French *cancan* or *quanquan*, idle talk.

opponent credit for entertaining a sincere desire after truth. A fact once established, he well knew, may lead to the discovery of many other links in the chain of truth. In his day too, a time when old saws were more regarded than now, it was a common Cheshire saying that "bastard slips shall not thrive;" and sir Thomas Mainwaring, remembering this, might think his family tree, ancient, widespread and flourishing as it was, might be taken as some evidence that Amicia was born in honour.

Neither of the champions was either a professed lawyer or a practical writer, but simply a country gentleman; and that so long and animated a controversy should have been carried on by two such men is not the least remarkable circumstance in the Amicia case.

Making allowance for a few outbreaks, the conflict was carried on most creditably on both sides. Sir Peter Leycester, as might be expected, defended his opinions honestly and strenuously; and sir Thomas Mainwaring did not bate one jot of heart or hope, but stood up for his side, so long as the controversy lasted.

His last tract, which closes the series, and in which he reviews the whole subject temperately and soberly, and without passion or prejudice, will remind the reader of a judge's summing up after the hearing of a long and intricate case. It seems as if the departure of his antagonist had made him determine to forget any ill feeling which his knightly antagonist's passes had caused him.

Upon the whole, he is fully entitled, as Amicia's gallant defender, to wear the armour in which the artist of his portrait has clothed him.

It now only remains for the editor to make his and the Society's grateful acknowledgments to those who have assisted him in his work.

To Miss HENRIETTA ELIZABETH MAINWARING, to whose pencil we owe the drawings of the stable at Peover, which form two of our illustrations, and one of which is the frontispiece of our third volume, many thanks are due, not only for the drawings themselves, but also for her ready compliance with the editor's request to make them.

To the right honourable lord DE TABLEY, owner of the portrait of sir Peter Leycester, and to sir HARRY MAINWARING, baronet, owner of the portrait of sir Thomas Mainwaring, who obligingly lent those portraits and allowed them to remain with the engraver sufficiently long to be engraved, the Society is especially indebted. To the latter the Society is under the great additional obligation of the loan of the unique series of tracts here reprinted.

To sir RICHARD BROOKE, baronet, for the loan of the original Audley pedigree, from which an extract has been given in the work; and to R. E. EGERTON WARBURTON, esquire, for his loan of Roger fitz Alured's gift in frank marriage and its confirmation by the constable, both which have been printed in the work, the Society owes its best thanks.

To WILLIAM CUNLIFFE BROOKS, esquire, M.P., who has contributed the engraved portrait of sir Thomas Mainwaring, and to RICHARD HENRY WOOD, esquire, F.S.A., the Society's esteemed secretary, who has contributed that of sir Peter Leycester, which form the very attractive frontispieces to the first two volumes, the Society owes a great debt for their liberality, which calls also for an especial acknowledgment from the editor whose work they illustrate.

To WILLIAM LANGTON, esquire, the Society's valued treasurer, the editor's thanks are due for the care and taste he has exercised in superintending the engraving of the illustrations of this work.

To THOMAS JONES, esquire, B.A., of Chetham's library, and to JAMES CROSSLEY, esquire, F.S.A., the Society's valued president, the editor tenders his warm thanks for verifying many references in the work; and to the president his further thanks are due for many valuable suggestions, of which he has availed himself in the work, some of which his readers will doubtless recognise as coming from his accomplished pen.

W. B.

APRIL, 1870.

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A DEFENCE OF AMICIA,

CORRIGENDA.

Page xxv, line 3, *after* Latina *insert* folio, 1607.
Page 138, line 13, for *Thesaurariis* read *Thesaurarius.*

tain *and* Ireland.
The second containing Particular Remarks concerning Cheshire.

Hath without any just Grounds declared the said *Amicia* to be a Bastard.

By Sir *Thomas Mainwaring* of *Peover* in *Cheshire*, Baronet.

London, Printed for *Sam. Lowndes* over against *Exeter* House in the *Strand.* 1673.

A DEFENCE OF AMICIA,

Daughter of

HUGH CYVELIOK,

Earl of CHESTER.

Wherein it is proved,

That Sir *Peter Leiceſter*, Baronet,

In his Book, Entituled,

Hiſtorical Antiquities,

In Two Books;

The firſt Treating in General of Great Britain *and* Ireland.

The ſecond containing Particular Remarks concerning Cheſhire.

Hath without any juſt Grounds declared the ſaid *Amicia* to be a Baſtard.

By Sir *Thomas Mainwaring* of *Peover* in *Cheſhire*, Baronet.

London, Printed for *Sam. Lowndes* over againſt *Exeter* Houſe in the *Strand*. 1673.

UNIV OF
CALIFORNIA

[1]TO [A 2, recto.]

Sir *Peter Leiceſter*, Baronet.

IT will appear very ſtrange to thoſe who know the nearneſs of Blood that is betwixt us, that I ſhould appear in Print againſt you; and I do confeſs, it is not without ſome regret, that I am conſtrained ſo to do: If you would have been contented to have delivered what you did conceit, concerning *Amicia*, the Daughter of *Hugh Cyveliok*, Earl of [2]*Cheſter*, as an uncer- [A 2, verso.]
tainty onely (as you have done that of *Roger*, Son of the ſaid Earl *Hugh*) you know I would have reſted ſatisfied with the Judgment of thoſe many knowing and unconcerned Perſons that have diſſented from you therein, and would never have given you and the Reader the trouble of any one of theſe Lines. But ſince you were ſo fond of divulging this your ſuppoſed new Diſcovery (notwithſtanding your being deſcended of her) as to determine her in your late publiſhed Book, abſolutely to be a Bastard; and did alſo many years ſince, without any other occaſion at all, ſend a Paper tending to the ſame purpoſe, to a then Deputy Herald (though at that time you did wholly miſtake the ſtate of the Caſe) I hope it

[A 3, recto.] will not be [3]taken ill if I endeavour to give her a publick Vindication.

I might here take occaſion to tell you, that I very much wonder, when you mention *Ralph Mainwaring*, Cheif Juſtice of *Cheſter*, and his Son *Roger*, and *William Mainwaring* Younger Son of the ſaid *Roger*, (which *William* had *Over* or *Higher Peover* by gift of his ſaid Father) that you do not take notice that they were all three Knights, you having ſeen proof thereof by many Deeds, where the word *Dominus* is prefixed to each of their names, which was not (that I know of) uſed to be done to any in thoſe elder Ages, but thoſe that were Knights (Clergy Men onely excepted) and accordingly in the 300 and 332 Pages of your Book, you own Sir *Thomas*
[A 3, verso.] *Mainwaring* of [4]*Warmincham*, to be a Knight upon the like Proofs; as alſo, why you have not in the deſcent of the *Mainwarings* of *Peover*, ſet down *Ranulfus* that is mentioned in *Domeſday* Book (whom you truly ſuppoſe to be a *Mainwaring*) as alſo all the other *Mainwarings* that were before the aforeſaid Sir *William Mainwaring*, in regard they held *Over Peover*, or the moſt part thereof, as well as they held *Warmincham*. For, that *Tadetune* which *Ranulfus* in *Domeſday* Book is ſaid to hold in *Mildeſtvic* Hundred is *Warmincham*, it appearing by Ancient Records that *Manerium de Tetton & Manerium de Warmincham eſt unum & idem Manerium;* and it is alſo clear, that *Ranulfus* was a *Mainwaring*, becauſe, though he be there named without a Sirname, as *Odard*
[A 4, recto.] or *Hu-*[5]*dard* (the owner of a part of *Dutton*) and many others were, yet the Sirname of *Meſnilwaren* or *Mainwaring* (for that name in Records and Deeds is written

very many ways) was as appears in your Book Pag. 111. uſed in the days of King *William Rufus* (as it alſo was ever ſince) and all the Lands that the ſaid *Ranulfus* had in *Cheſhire* which are mentioned in your Book, Pag. 422, 423, 426, 427. As alſo all the Lands that *Ranulfus* held in *Norfolk* were enjoyed by the Family of the *Mainwarings.*

I might alſo here take notice of your mistake in the 336 Page of your Book, where you blame the Herald for making, in Queen *Elizabeths* time, for the then Sir *Randle Mainwarings* Coat *Barry of Twelve pieces Argent and Gules* (for [6]which you cite *Guillims* Heraldry) but [A 4, verso.] that was the miſtake of *Guillim*, and not of the Herald, as appears by the Pedegree then made, which you have often ſeen. For, the Coat which the Herald did then allow the ſaid Sir *Randle* to have a Right unto (as well as to thoſe two placed in your Book, P. 331. and 333. the firſt whereof, though cut right, is by you blazoned amiſs) was *Argent ſix Barulets Gules*, which Coat you take notice Sir *Roger Mainwaring* did Seal with; and the direct Line of the ſaid Sir *Roger Mainwaring* preſently failing (Sir *Thomas Mainwaring* Eldeſt Son of the ſaid Sir *Roger*, having iſſue Sir *Warine Mainwaring*, who had iſſue a Daughter and Heir) I know no reaſon but the *Mainwarings* of *Peover*, who (as is confeſſed by you Pag. [7]333.) are now next Heir-Male to the *Mainwarings* of [A 5, recto.] *Warmincham*, have a good right to the *Six Barulets* with which Sir *Roger Mainwaring* of *Warmincham*, Father of Sir *William Mainwaring* of *Peover* did Seal, as well as they have to the *Two Bars*, which Sir *Thomas Mainwa-*

ring of *Warmincham*, Brother of the ſaid Sir *William Mainwaring* did bear.

I might in like manner here, let you know that I do ſuſpect you have branded ſeveral Perſons in your Book with *Baſtardy*, without direct Proof thereof. And although I ſhall not concern my ſelf for any, but ſome of thoſe which are by you mentioned, when you write of the baſe iſſue of *Hugh Cyveliok;* yet if I make it appear
[A 5, verso.] that you have there without any [8]certainty aſperſed two other Ladies beſides *Amicia*, I hope you will have no juſt cause to blame,

SIR,

Your moſt affectionate

KINSMAN

and Servant

Baddeley, Feb. 27. 167$\frac{8}{9}$

Thomas Mainwaring.

[1]The Words of Sir *Peter Leiceſter*, concerning *Amicia*, Daughter of *Hugh Cyveliok*, Earl of *Cheſter*, in his *Hiſtorical Antiquities*. [Page 1.]

Part 2. *Chap.* 5. *Pag.* 134, 135, 136, 137, and 138.

IV. *The Baſe Iſſue of* Hugh Cyveliok.

DAganus, Dominus de Milton, *whom I have ſeen witneſs to a Deed, ſubſcribed thus* ——— Filius Baſtardus Hugonis Comitis Ceſtriæ.

Roger, *witneſs to a Deed of his Brother* Randles, *to the Abbey of S.* Werburge, *whom I conceive was a Baſtard.*

[2]Amicia, *the Wife of* Ralph Mainwaring *ſometime Judge of* Cheſter, *to whom* Hugh Cyveliok, *Earl of* Cheſter, *her Father, gave* In libero maritagio ſervitium Gilib. filii Rogeri, ſcilicet ſervitium trium Militum: Faciendo ſibi ſervitium duorum Militum, *as the words of the Original Deed do run now in the poſſeſſion of Sir* Thomas Mainwaring *of* Over Peover *Baronet.* [Page 2.]

Alſo, another Baſe Daughter, as I conceive, Married one Bacun, *and had Iſſue* Richard Bacun, *Founder of the Priory of* Rouceſter *in* Staffordſhire, *about the Reign of King* John; *for the ſafety of his Soul, and the Soul of his Uncle* Randle, *Earl of* Cheſter. Monaſt. Part 2. pag. 267.

And here I cannot but miſlike the boldneſs and ignorance of that Herald, who gave to Mainwaring *of* Peover, *the Quartering of the*

Earl of Cheſter's *Coat of Arms. Which device was never done before the Raign of Queen* Elizabeth, *in the time of Sir* Randle Mainwaring, *late of* Peover, *the Elder, my Grandfather by the Mother; for if he ought of right to Quarter that Coat, then muſt*
[Page 3.] *he be deſcended from a Coheir to the Earl of* Cheſter, *but that* [3]*he was not; for, the Coheirs of Earl* Hugh, *as you ſee before, were married to Four of the greateſt Peers of the Kingdom, the Earl of* Huntington, *the Earl of* Arundel, *the Earl of* Derby, *and the Earl of* Wincheſter's *Son and Heir, who lived not to be Earl: Neither was* Mainwaring *then an equal Competitor to have Married a Coheir to the Earl of* Cheſter; *and it is plain,* Ex. Placitis, 18 Hen. 3. Rot. 14. *in the Tower of* London, *where the Coheirs implead* John *the* Scot, *Earl of* Cheſter, *for their part; there is no mention of* Amice *claiming any part, or any from or under her in the Record: Beſides, all Antient Authors of thoſe times, as* Polychronicon, Matthew Paris, Knighton, Stow, *and others, would not have omitted her amongſt the reſt which they have ſet down, had ſhe been a Coheir, which alſo ſhe muſt needs have been, had ſhe been Legitimate; for* Hugh Cyveliok *never had any other Wife but* Bertred, *and ſhe ſurvived him.*

And though Amice, *in the Deed before mentioned, is ſtiled* Filia Hugonis Comitis, *without the Addition or Note of Baſtard; it was very uſual in thoſe elder ages ſo to do: The like we find of*
[Page 4.] Geva, *Baſe* [4]*Daughter of* Hugh Lupus, *and ſeveral others.*

V. *Concerning this* Bertred, *the Wife of* Hugh Cyveliok, *I cannot omit the Falſities and Abſurdities of ſome Authors, as* Powel *on the* Welſh Hiſtory, p. 295. *and* Ferne *in his* Lacy's Nobility, p. 53. *Both of them calling this* Bertred *by the name of* Beatrix, *and ſaying ſhe was the Daughter of* Richard Lucy, *Cheif Juſtice of* England, *a moſt groſs falſity. I am very certain, that* Hugh Cyvelioks *Wife was not Daughter of* Lucy, *nor ever called* Beatrix *in any old Deed or Record, though I find by good authority that there was a Woman called* Beatrix Lucy, *but never Wife of Earl* Hugh.

The Death of *Hugh Cyveliok.*
Obiit. 1181.

THis Hugh, *Earl of* Cheſter, *died at* Leek, *in* Staffordſhire, *and was buried at* Cheſter, Anno Dom. 1181. 27 Hen. 2. Hoveden, Pag. 615. *With whom,* Weſtminſter, Polychronicon, *and* [5]Cambden inter Comites Ceſtriæ, *do all agree.* [Page 5.]

He was Earl of Cheſter *Twenty eight years, and gave the Church of* Bettesford *to the Prior and Canons of* Trentham, *after the death of* William Barba, *who at the time of this Grant poſſeſſed the ſame, a Copy of which Deed, I received from Sir* Simon Dews *Baronet.*

Now becauſe I find that ſome are diſpleaſed at my placing of Amice, *ſometime the Wife of* Ralph Mainwaring, *Judge of* Cheſter, *among the Baſe Iſſue of* Hugh Cyveliok, *Earl of* Cheſter; *and alſo, that I am informed that three eminent Judges and four Heralds, are of opinion, That ſhe was Legitimate, and not a Baſe Daughter of Earl* Hugh. *It is very neceſſary, that I put down here my Reaſons why I have ſo placed her, proteſting withal, that I have not done it out of any prejudicate opinion, or calumny intended in the leaſt, but onely for the truths ſake according to the beſt of my judgment, and that after a long and diligent ſcrutiny made herein; for I muſt ever acknowledge my ſelf to be extracted out of the Loyns of this* Amice, *by my own Mother; but you know the old ſaying of* Ariſtotle, Amicus Plato, Amicus [6]Socrates, Sed [Page 6.] magis amica veritas. *Neither were Baſtards in thoſe elder Ages of ſuch diſrepute as now in our days,* Memini me alicubi legiſſe (*ſaith* Spelman *in his* Gloſſary *on the word* Baſtardus) Priſcos ſeptentrionales Populos etiam ſpurios admiſiſſe in ſucceſſionem; *and where he farther tells us, that King* William *the Conqueror began his letter to* Alan, *Earl of* Little Britain, *as he did many other more, in theſe words,* Ego Willielmus cognomento Baſtardus. *Of which Title (it ſeems) he was not aſhamed, otherwiſe he would never have uſed it himſelf.*

And therefore the Queſtion being no more then this, Whether Amice *was a Baſe Daughter, or no? I will firſt anſwer thoſe Reaſons which ſeem to be the cheif ground of thoſe worthy Perſons aboveſaid, who think* Amice *was no Baſtard, and then in order ſet down my own Reaſons, why I conceive her to be a Baſtard; ſubmitting my ſelf wholly to the judgment of all Learned Perſons herein.*

[Page 7.]

[7]The Reaſons that She was no Baſtard.

FIrſt, *Our Common Law alloweth not that any Lands can paſs* in libero Maritagio *with a Baſtard Daughter,* Coke upon Littl. fol. 21. b. *And therefore* Amice *having Land given with her* in libero Maritagio *by the Deed, it muſt be preſumed that ſhe was no Baſtard.*

Anſw. *To which I anſwer, That it is true, the Law is ſo taken at this day with us; but that the Law was ſo taken in the elder ages of* Henry *the Second, when* Hugh Cyveliok *lived and upwards, I very much doubt; and if we mark well this Grant, it is the Grant of Earl* Hugh *to* Ralph Mainwaring *with* Amice *his Daughter, in Frank-marriage of the Service of* Gilbert, *Son of* Roger, *to wit, the Service of three Knights Fees, by doing the Service of two Knights Fees to the ſaid Earl and his Heirs; which is rather a Releaſe of the Service of one Knights Fee, then the Grant of any Land. But to paſs by this ——— I ſay, That*

[Page 8.]

the Common Law in ſundry things is [8]*altered at this day, from what it was in former Ages, long after* Henry *the Second,* Coke upon Littl. fol. 34. Sect. 39. Coke ibid. fol. 3. a. fol. 8. a. *At the bottome of the Page, and on the other ſide* (b) *at the bottome,* Fol. 26. b. Sect. 29. *and infinite other particulars may be cited. And that in this particular alſo of paſſing Land* in libero Maritagio *with Baſtards, the Law ſeems clearly to be altered herein ſince the Reign of* Henry *the Second. For, the common practiſe I*

take to be the Common Law, and I ſhall give you here one Precedent made about the Raign of King Stephen (*and doubtleſs many others might be muſtered up from thoſe elder ages, if any curious perſon would take pains to ſearch old Deeds and Records*) *which Deed I received from Sir* Simon Dewes, *tranſcribed out of a Manuſcript in* Arundel *Houſe in* London, *belonging antiently to the Barons of* Stafford, *wherein the old Charts belonging to the* Baſſets *of* Drayton-Baſſets *in* Staffordſhire *were inrolled about* Richards *the Second's time.* Ibid. fol. 67. a.

Ranulfus Comes Ceſtriæ Willielmo Conſtabulario & Roberto Dapifero & omnibus Baronibus ſuis & hominibus Francis & Anglicis totius Angliæ ſalu-[9]tem. Sciatis me dediſſe & conceſſiſſe Gevæ Ridell Filiæ Comitis Hughes Draytunam cum pertinentiis in libero conjugio, ſicuti Comes Hughes ei in libero conjugio dedit & conceſſit. Et teneat bene & in pace, honorifice, & liberè ut melius & liberiûs tenuit tempore Hugonis Comitis & aliorum meorum anteceſſorum eiſdem conſuetudinibus & libertatibus. Teſtibus Gilberto Filio Ricardi, & Adelizâ ſorore meà, & Willielmo Blundo, & Alexandro de Treſgor, & Rogero de Bellocampo, & Willielmo de Sais, & Roberto de Sais, & Ricardo Filio Aluredi, & Hugone Filio Osberti, & Henrico de Chalder: Apud Saintonam. [Page 9.]

Wherein Geva *is called Daughter of Earl* Hugh Lupus, *as* Amice *in that other Deed is termed Daughter of Earl* Hugh Cyveliok. *Now that* Geva *was a Baſtard is very plain out of* Ordericus, *a Man that lived in that very age, he tells us,* Lib. 10. pag. 787. *ſpeaking of* Hugh Lupus, *his death* —— Richardus pulcherrimus puer quem ſolùm ex Ermentrude Filia Hugonis de Claromonte genuit, &c. Richard, *a brave youth; whom onely* Hugh Lupus *begot on* Ermentrude, *Daughter of* [10]Hugh de Claremonte, &c. *Nor can this be reſtrained to the onely Son, for then it muſt have been otherways expreſſed; and if* Hugh Lupus *had any other Son or Daughter by* Ermentrude, *then cannot* Richard *be ſaid onely to be begotten on her by Earl* Hugh, *and ſo* Geva *was a Baſtard, or elſe* Ordericus *lies. Alſo the ſame Author tells us,* [Page 10.]

Lib. 4. p. 522. *that* Hugh Lupus *had alſo many Baſe Sons and Daughters by several Strumpets, who were almoſt all ſwept away by ſundry misfortunes; and very probably, if* Hugh Lupus *had any more Legitimate Children by his Wife, beſides Earl* Richard, *either Son or Daughter,* Ordericus *would have Recorded them as well as he hath put down others in like Nature, being indeed his uſual method through the whole courſe of his History. And had* Geva *been Legitimate, then her Iſſue ought rather to have ſucceeded into the Earldom of* Cheſter, *then* Randle de Meſchines, *after the Death of* Richard, *Earl of* Cheſter, *for as much as the Siſter and her Heirs, ought to inherit before the Aunt and her Heirs; and howbeit many Earldoms have deſcended to the Heirs-males, and not to the Heirs General, yet in this caſe were no Heirs-male, but*
[Page 11.] *two* [11]*Females, an Aunt Legitimate, who had it, and a Siſter not Legitimate: And ſhow me a Precedent, where ever the Heirs of an Aunt inherited before the Heirs of a Siſter, both legally born, and no Heirs-male left, unleſs in caſe of Forfeiture by Treaſon, or ſome other great cauſe to hinder the ſame.*

Secondly, *Add to theſe the words of* Glanvile, *Cheif Juſtice of* England, *who lived under* Henry *the Second, in that very age with* Amice, Lib. 7. cap. 1. Quilibet liber homo quandam partem terræ ſuæ cum Filia ſua, vel cum aliqua alia qualibet muliere dare poteſt in Maritagium, ſive habuerit hæredem, ſive non, velit hæres vel non, imò & eo contradicente. *And if a Man might give Land then in Free-marriage with any Woman whatſoever, then he might give it to his Baſtard, and then the Law is now changed, for now it muſt be of the Donors Blood, and a Baſtard is now ſaid not to be of the Donors Blood,* Quaſi nullius Filius, *and it ſeems to me, that in thoſe elder ages, Baſtards were reputed of the Blood by the frequent appellation of them by the names of Uncle, Brother, Daughter, Son, and Coſin: Beſides, our Laws were then*
[Page 12.] *imperfect, dark, and obſcure in moſt things, till* Bracton, [12]*under King* Henry *the Third, compiled the Body of our Laws, and brought them into a method.*

And now I have done concerning this cheif Reaſon, whereupon

thoſe worthy Judges grounded their Opinions; and we daily ſee Opinions of Lawyers follow the putting of the Caſe, which many times upon mature deliberation, and hearing of the Caſe well argued, may then be of another Opinion.

Now follow the Arguments of leſſer moment, which I perſwade my ſelf were no Grounds for the Judges aforeſaid.

II. *THe diſparity of the years between* Hugh Cyveliok *and* Bertred *his Wife, may ſuppoſe he had a former Wife; for* Bertred *was but Twenty ſix years old at the Death of Earl* Hugh 1181. *as appears by the Inquiſition taken* 30 H. 2. 1183. *after the death of* Hugh Cyveliok; *and* Hugh *was Earl of* Cheſter *Twenty eight years, which was one or two years before* Bertred *was born; beſides what years were run up of his age before his Father* Randle *died, which may be ſuppoſed to be* [13] *a competent term* [Page 13.] *of years; and then it is probably he had a former Wife, and that he ſtaid not unmarried ſo long as till* Bertred *was fit for marriage.*

Anſw. *Now let us examine the Matter a little, it will give us ſome light,* Robert, *Earl of* Gloceſter, *married* Mabill, *Daughter and Heir of* Robert Fitz-Haimon, Anno Dom. 1110. *So* Stow *in his Chronicle. See alſo* Seldon's Tit. Hon. pag. 647. *By her he had Iſſue four Sons and two Daughters.* Maud, *the younger Daughter married* Randle de Gernoniis, *Earl of* Cheſter, *Father to* Hugh Cyveliok. Vincent upon Brook, p. 216. *Now ſuppoſe we,* Maud *to be the fourth Child, probably ſhe was not born till about the year* 1117. *or thereabout; and that about the year* 1139. *ſhe was married to Earl* Randle, *whereby* Robert, *Earl of* Gloceſter, *ſtrengthned his party for* Maud *the Empreſs; at that time ſhe cannot well be ſuppoſed to be above Twenty two years old, if ſhe were ſo much. Now Earl* Randle *died* 1153. *So that* Hugh Cyveliok *could not poſſibly be above Twelve years old at his Fathers death, he might be much leſs: But ſuppoſe we in a middle way, that he was ſix years old at his Fathers death, which is* [14] *more then can* [Page 14.]

be well affirmed, then could not Earl Hugh *be above Seven or eight years elder then* Bertred *his Wife; And what great matter is this? I my ſelf was eight years older then my Wife when I was married; but it is much more probable that he never had any other Wife, becauſe he had many Baſtard Sons and Daughters, whoſe heat of youth might by a very timely marriage, have been poſſibly prevented, or at leaſt aſſwaged in ſome meaſure.*

III. Bertred, *the Wife of* Hugh Cyveliok, *was a witneſs to the Deed in Frank-marriage with* Amice, *and* Amice *had a Daughter called* Bertred, *after the name of the Counteſs.* Ergo, *Probably* Amice *was no Baſtard.*

Anſw. *Truly this is of ſo little weight, that it will need no anſwer; for I yet apprehend no reaſon in it.*

IV. Roger Mainwaring, *Son of* Ralph Mainwaring, *calls* Randle Blundevil, *Earl of* Cheſter *and* Lincoln, *his Uncle in another Deed; wherefore it is to be ſuppoſed that* Amice *was no Baſtard, otherwiſe* Roger *durſt not have preſumed to have called the Earl Uncle.*

[Page 15.] [15]Anſw. *Hiſtories, Deeds, and Records, are full of Examples in this nature, where we find Baſtards frequently called Coſin, Brother, Uncle, Son, and Daughter. For example,* Robert, *Earl of* Gloceſter, *Baſe Son of King* Henry *the Firſt, is frequently called in Hiſtories, Brother to* Maud *the Empreſs,* Hoveden, p. 553. *He is alſo ſo ſtiled in a Deed made by* Maud *the Empreſs her ſelf,* Seldon's Tit. Hon. p. 649. *Called alſo Coſin to King* Stephen, Ordericus, pag. 922. Reginald, *Earl of* Cornwal, *another Baſe Son of* Henry *the Firſt, ſtiled* Avunculus Regis Henrici Secundi, *by* Hoveden, pag. 536. Robert *and* Ottiwel, *two Baſtard Sons of* Hugh Lupus, *frequently called* Filii Hugonis Comitis Ceſtriæ, *and* Ottiwel *ſtiled* Frater Ricardi Comitis Ceſtriæ, Ordericus, p. 602. & 783. & 870. Geva *a Baſe Daughter of* Hugh Lupus, *ſtiled in old Deeds* Filia Hugonis Comitis; *and there alſo ſhe calls Earl* Randle *her Coſin,* Monaſticon, Part 1. pag. 439. *Alſo*

Richard Bacon, *Son of another Baſe Daughter of* Hugh Cyveliok, *calls* Randle Blundevil, *Earl of* Cheſter, *his Uncle, in another Deed, as* Mainwaring *in like manner here ſtiles him in this Deed,* Monaſticon, Part 2. [16]p. 267. *Every Man that is but the leaſt verſed in Antiquities, knows theſe things to be very uſual.* [Page 16.]

The Reaſons that *Amice* was a Baſtard.

I. IF Hugh Cyveliok *had no other Wife but* Bertred, *then* Amice *muſt certainly be a Baſtard; for ſhe was not a Daughter by* Bertred, *as is granted on all ſides.*

But Hugh Cyveliok *never had any other Wife but* Bertred. Ergo, Amice *was a Baſtard.*

Now the Minor is to be proved by the Affirmer, Oportet Affirmantem probare: *For as yet I never ſaw the leaſt proof thereof, either by Deed, Record, or any Ancient Hiſtorian, nor yet any inducement of good reaſon to incline my belief of it; and till this be done it is unreaſonable to impoſe it upon any Mans belief, by ſuppoſing that he had another Wife, for ſuppoſitions are no proof at all. It is not enough to ſuppoſe* Amice *might be by a former Wife, but it muſt be clearly proved, or ſtrongly inferred* [17]*from ſolid Reaſon, that it is ſo, and that* Hugh *had a former Wife.* [Page 17.]

Neither is it a ſufficient anſwer hereunto to ſay, That it is unreaſonable to conclude all Children Baſtards, whoſe Mothers cannot be proved, God forbid: But in this Caſe we find a Wife certainly Recorded, and a Son and four Daughters (who were afterwards Coheirs, and carried away all Earl Hugh's *Lands) clearly proved by Records and Antient Hiſtorians; and alſo Earl* Hugh *is certainly known to have had many Baſtards both Sons and Daughters, which gives occaſion of ſtrong ſuſpition, that* Amice *was a Baſtard, ſhe being neither Recorded by any Hiſtorian, nor ever had or claimed any Land as a Coheir; and therefore here is a neceſſity of proving*

a former Wife; which, for my part, I believe firmly Earl Hugh *never had.*

2. *Whatſoever is given in Frank-marriage, is given as a Portion. Now the Releaſe of the Service of one Knights Fee in Frank-marriage, ſeems not a competent Portion for a Legitimate Daughter of the Earl of* Cheſter, *eſpecially for the eldeſt Daughter, for ſo ſhe muſt be, being of the firſt venter, which always is more worthy then*
[Page 18.] *the ſe-*[18]*cond, if ſhe were at all Legitimate. And we find the other Daughters married to four of the greateſt Earls in* England. *All which is a ſtrong preſumption, that* Amice *was a Baſtard and no Legitimate Daughter.*

To this it may be anſwered, That poſſibly Earl Hugh *might give* Amice *a great Portion in Money, though ſhe had no Lands; and I ſay poſſibly too, he might give her no Money, or at leaſt nothing conſiderable. Which great Portion in Money, when it ſhall appear to be true, may take off the ſtrength of this Argument or Second Reaſon, till then it muſt be very preſſing.*

3. *The Antient Hiſtorians of our Nation, as* Polychronicon, *writ by the Monk of* Cheſter, Henry Knighton, *the Monk of* Leiceſter, *and others; alſo* Stow *and* Cambden *have Recorded the lawful Daughters and Coheirs of Earl* Hugh. *And ſo the Record of* 18 Hen. 3. *And had* Amice *been a Legitimate Daughter, it is likely that these Hiſtorians would not all have omitted her, but of her there is* Altum ſilentium *among all the Hiſtorians and Re-*
[Page 19.] *cords which I have yet ſeen, though in-*[19]*deed I look upon this onely as a probable, not as a ſure evincing Argument.*

> *Theſe were the Reaſons which inclined my Opinion to place* Amice *in that order as I have done; but ſince there are ſome Learned Men of another Opinion, I muſt leave every Perſon to the dictate of his own Reaſon.*

[21]THE [Page 21.]

DEFENCE
OF
AMICIA,
Daughter of *Hugh Cyveliok*,
Earl of *Cheſter*.

I Do very much wonder that you ſhould ſo peremptorily call *Amicia* a Baſe Daughter of *Hugh Cyveliok*, unleſs you had more ſure grounds to go upon: And though it be onely my task to defend the ſaid *Amicia*, yet I do ſuppoſe I ſhall make it appear before I [22]have done, that you go upon no abſo- [Page 22.]
lute certainty, in calling her that was Mother to *Richard Bacun*, Founder of the Priory of *Rouceſter* in *Staffordſhire*, another Baſe Daughter of the ſaid *Hugh Cyveliok*, or in calling *Geva* a Baſe Daughter of *Hugh Lupus*.

At preſent give me leave to remind you what you have been formerly told, *viz.* That thoſe Heralds that gave to *Mainwaring* of *Peover* the quartering of the Earl of *Cheſter*'s Coat in Queen *Elizabeth*'s time, were Mr. *William Cambden* and Mr. *Sampſon Erdeſwick* (Perſons, who very well underſtood themſelves) and I do not know why you ſhould ſo much miſlike their boldneſs and ignorance (as you call it) for their ſo doing: For, though we did not antiently quarter that Coat, it not being uſual in that age, when that match was made, for any ſo to do; and that it may

perhaps in ſtrictneſs be true, that it doth yet onely belong to thoſe of the whole Blood to Quarter Coats, and that to ſhew their Right; yet it being now a common practiſe for thoſe who are of the half Blood alſo to do it, to manifeſt, That they deſcend
[Page 23] of the ſame Father that [23]thoſe of the whole Blood do, I know not why it ſhould be accounted a crime in us, more then in others in the like Cafe.

As for your Objecting, That *Mainwaring* was not then an equal Competitor, to have married a Coheir of the Earl of *Cheſter*, the Coheirs being married to Four of the greateſt Peers of the Kingdom: We do not ſay, That he either was an equal Competitor, or that ſhe was a Coheir to Earl *Randle*, ſhe being the Daughter to *Hugh Cyveliok*, by a former Wife, and ſo but half Siſter to the ſaid Earl *Randle;* however, that could have been no ſubſtantial Argument to prove that *Amicia* was not Legitimate.

1. Becauſe, ſometimes ſome particular Perſons have the fortune to marry Wives far beyond their Degrees or Eſtates.

2. Neither was Sir *Ralph Mainwaring* ſo inconſiderable a Perſon, as perhaps you may conceit him to be. For, beſides that, Sir *Roger Mainwaring*, Son of the ſaid Sir *Ralph*, did after
[Page 24] the death of the [24]ſaid Sir *Ralph* give to Sir *William Mainwaring* his younger Son, *Peover*, as alſo ſome other Lands; the ſaid Sir *Ralph* had alſo the Lordſhip of *Waburne* in *Norfolk*, and the Lordſhips (or great part) of *Rode*, *Blakenhal*, *Warmincham*, *Northerden*, *Aſhton juxta Kelſall*, *Henbury*, and *Pexhull*. *Willaſton*, *Great Warford*, *Little Warford*, *Whelock*, *Winnington*, *Cokiſhall*, *Tatton*, *Senelleſtune*, *Smalwood*, and half of *Pichmere*, as alſo other Lands in *Cheſhire;* the moſt of which came to Sir *William Truſſel*, who about *Edward* the Firſt's time, married *Matilda*, the ſole Daughter and Heir of Sir *Warine Mainwaring*, Son of Sir *Thomas Mainwaring*, Son of Sir *Roger*, Son of the ſaid Sir *Ralph* and *Amicia:* And the ſaid Sir *Ralph* was Cheif

Juſtice of *Cheſter*, which antiently hath been a place of that great repute that Dukes of *York*, *Gloceſter*, *Exeter*, and *Ireland*; and Earls of *Nottingham*, *Wiltſhire*, *Suffolk*, *Shrewsbury*, and *Derby*; beſides, other great Perſons have heretofore enjoyed the ſame.

3. Neither was the Caſe the ſame with the other Daughters of the Earl of [25]*Cheſter*, when *Ralph Mainwaring* married with *Amicia*, as it was afterward, for *Amicia* was married in the life time of her Father Earl *Hugh*; whereas thoſe Four came to be ſuch great Fortunes upon the death of their Brother *Randle*, Earl of *Cheſter* and *Lincoln*, without Iſſue, to whom they then became Heirs, they being his Siſters of the whole Blood; and though all, or moſt of them were married before they came to be his Heirs, yet the ſaid Earl *Randle* having never had Iſſue, the expectation of that Eſtate added to their other Portions, muſt needs make them very conſiderable Fortunes; whereas *Amicia* was but of the half Blood, being a Daughter of Earl *Hugh* by a former Wife. [Page 25.]

And whereas you do acknowledge that you have been informed, That Three eminent Judges, and Four Heralds are of opinion that *Amicia* was Legitimate, and not a Baſe Daughter, you received that information ſeveral years ago; but you were alſo lately told by one, whom I hope, you have no reaſon to diſcredit; that ſince then, ſeveral other Learned Judges and He-[26]ralds had been conſulted. All which did concur in the ſame opinion, that *Amicia* was Legitimate. [Page 26.]

But before I come to the Reaſons that are by you alleaged, either for or againſt *Amicia*, give me leave to recite theſe Three Deeds following, that thoſe who read them, and the Reaſons on both ſides, may clearly underſtand the full State of the Caſe.

HUgo Comes Ceſtr' Conſtabular' Dapifer' & omnibus Baronibus ſuis & Univerſis Ballivis & hominibus ſuis Francis & Anglicis tam præſentibus quam futuris ſalutem. Sciatis me dediſſe & conceſſiſſe & hac præſenti Karta mea confirmaſſe Ra-

dulpho de Menilwarin cum Amicia Filia mea in libero maritagio ſervitium Gilib. filii Rogeri, ſcilicet, ſervitium trium Militum faciendo michi ſervitium duorum Militum ille & hæredes ſui michi & hæredibus meis, quare volo & firmiter præcipio ut nullus ſuper hoc eum vel hæredes ſuos vexet, vel amplius quam ſervitium duorum Militum de hoc prædicto tenemento requirat. Teſte R. Abbate Ceſtr. Bertrcia Comitiſſa Ceſtr. Sim. Thuſchet, Rogero de Livet,
[Page 27.] *Gilib. filio Pigot. Rob. fratre*[27] *ſuo, Frumb. de Ridford. Willielmo de Meinilwarin, Rob. filio Ham. Bettr. Cam. Rob. de Meinilwarin, Ran. de Lee, Rad. Clerico, Petro Clerico qui hanc Kartam fecit & multis aliis apud Lee.*

R Adulfus de Meidnilwar' omnibus præſentibus & futuris ad quos præſens ſcriptum pervenerit ſalutem. Sciatis me dediſſe & conceſſiſſe & præſenti carta mea confirmaſſe Henrico de Alditelegh in liberum maritagium cum Bertrea filia mea Smelewde cum pertinentiis & Senelleſt' : Cum pertinent. & dimid' Pichemere cum pertinentiis ſuis & i. Marc. de redditu annuo in Civitate Ceſtr' de terra quæ fuit Fagun. quam Robert' filius Ermwi de me tenuit illi & hæredibus ſuis qui de dicta Bertrea filia mea pervenient habend' & tenend' de me & hæredibus meis in feodo & hæreditate libere & quiete plene & pacifice in boſco & plano in pratis & paſcuis in aquis viis & in ſemitis in vivariis & in molendinis & in omnibus locis & libertatibus prædictis terris pertinentibus ſicut liberum maritagium melius & liberius tenri pot' : Et ego & hæredes mei illi & dictis hæredibus ſuis contra omnes homines dictas terras
[Page 28.] *Warrantiza-*[28] *bimus. Teſt' Ran' Com' Ceſtr. Hug' Com' Ultoniæ, Phil' de Orreby tunc Juſtic. Ceſtr. Joh. de Ptell' Hug. Malebiſſ. Ric. de Vern. Ran. de Meidnilwar. Clerico. Lidulf. de Tuaml' Rob. de Periis, Ric. de Kingeſt. Norm. Pant. Tho. de Orreby, Alured de Sulinni. Pet. Chan. Gg. de Aldith. Ric. de Rodeſt. Clerico & multis aliis.*

O Mnibus hanc Cartam viſuris vel audituris Rogerus de Menilwarin æternam in Domino ſalutem. Noverit Univerſitas

veſtra me pro ſalute animæ Domini Ranulphi quondam Comitis Ceſtriæ & Lincolniæ Avunculi mei & pro ſalute animæ meæ & animarum anteceſſorum & ſucceſſorum meorum dediſſe conceſſiſſe & hac præſenti Carta mea confirmaſſe Deo & Beatæ Mariæ & Abbati & Monachis de Deulacreſſe & eorum Grangie de Biveleg. in liberam puram & perpetuam Elemoſynam liberam communam in boſco meo de Pevere, ſcilicet, Ut accipiant de eodem boſco husbot & haybot rationabiliter per viſum alicujus foreſtariorum meorum quantum neceſſe habuerint, ſine impedimento aeriarum niſorum meorum ubicunque nidificaverint, Præterea dedi eis libe-[29]*ram peſſionem &* [Page 29.] *quietam de pannagio quinquaginta porcis quandocunque voluerint in prædicto nemore meo de Pevere, pro hac autem donatione & conceſſione mea, Ego Rogerus prædictus & hæredes mei de prædictis Abbate & Monachis de Deulacreſſe nichil exigere poterimus, niſi orationes & ſuffragia ordinis Ciſtercienſis. Ego vero & hæredes mei ſepedictam donationem & conceſſionem meam ſepedictis Abbati & Monachis & Grangie de Biveleg contra omnes gentes Warrantizabimus imperpetuum. Et ut hæc donatio mea rata & inconcuſſa in ſempiternum perſeveret eam præſentis Cartæ teſtimonio & Sigilli mei impreſſione roboravi. Hiis teſtibus Willielmo de Menilwarin. Willielmo Capellano de Lauton. Ricardo de Moſton. Bened. de Cawdray, Johanne de Motlawe, Willielmo de Pevere, Hugone de Weloc. Nicolao de Wereford, Gilberto Gekell. & aliis.*

And now I ſhall conſider of your Anſwer to the firſt Reaſon on the behalf of *Amicia;* which Reaſon, I think, ſhould have been expreſſed to this, or the like effect, *viz.*

Our Common Law neither now doth, nor heretofore ever did allow, that [30]Lands or Services could be paſſed *In libero Mari-* [Page 30.] *tagio* with a Baſtard Daughter by the Reputed Father, becauſe a Baſtard is not *De ſanguine Patris.* And therefore *Amicia* having Services given with her *In libero Maritagio* by her Father, it neceſſarily follows that *Amicia* was no Baſtard.

To which, your Anſwer is, that it is true, the Law is ſo taken at this day; but you much doubt, whether it was ſo taken in the

elder Ages of *Henry* the Second, and upwards; and to make good what you ſay, you cite my Lord *Coke upon Littleton* in ſeveral places; as alſo *Glanvile*, Cheif Juſtice of *England*, who lived in the ſame time that *Amicia* did; and you alſo alledge, that you have found a Precedent where Lands were given by the Father in Free Marriage with his Baſe Daughter.

To what you urge out of my Lord *Coke*, I do thus ſay, That I do conceive the Common Law, where not altered by Parliament, is the ſame at this day that it was formerly; and therefore my Lord *Coke on Littleton*, telling us *Pag.* 115. *b.* that it is a Maxim
[Page 31.] of the Law, *That whatſoever was at the Common Law,* [31] *and is not ouſted or taken away by any Statute, remaineth ſtill.* I might thence argue, That if it had ever been at the Common Law, that a Man might have given Lands or Services *In libero Maritagio* with a Baſtard, or one that is not of the Blood, that it would be lawful to do ſo ſtill, becauſe that part of the Law is not ouſted, or taken away by any Statute; but a Man cannot do ſo now: And therefore the Common Law never was, that a Man might give Lands or Services with a Baſtard in Free Marriage, or to one that was not of the Blood. So that thoſe places which you have cited, do not prove, That the Common Law at this day doth vary from what it was in former ages in any particular, but onely that it was taken to be otherwiſe in thoſe days; and it is but juſt like ſome Caſes in our *Reports*, which have at ſeveral times been adjudged directly contrary to each other, but notwithſtanding that, the Law was ſtill the ſame.

But that I may come as near you as I can, I ſhall acknowledge, that though the Common Law was ever the ſame, where not
[Page 32.] altered by Parliament, yet in for-[32]mer Ages they did in ſome particulars, take the Law to be otherwiſe than they now do; and if you could prove, that they did ſo in this Caſe of Free Marriage, it would take off much of the ſtrength of this Argument, becauſe that Antient Deeds and Grants (according to what my Lord *Coke on Littleton*, ſays *fol.* 8. *b.* at the bottom) are to be expounded as the Law was taken to be at the time of the Grant: But this is

ſo far from making againſt my opinion, that I think it doth add very much ſtrength thereto; for if it had been taken in former Ages, that Lands might have been given in Free Marriage with a Baſtard, or one not of the Blood, it certainly would ſometime or other, have been ſo obſerved by ſome of the Sages of the Law; for where the Law hath been taken in one Age after one manner, and in another age after another manner, it is ſo remarkable, that it could not paſs unobſerved by all.

As to what you alleage out of *Glanvil*, who ſays, *Quilibet liber homo quandam partem terræ ſuæ cum Filia ſua vel cum aliqua alia qualibet muliere dare poteſt in Maritagium.* I do conceive it is the ſame [33]thing in Law, and ſhall be ſo intended, as if it had been expreſly ſaid, *With any Woman of his Kinred;* and that for theſe Reaſons. [Page 33.]

Firſt, Becauſe though ſuch kind of Expreſſions ſeem to be Univerſal, and without any exception at all; yet they ſhall not be ſo largely taken, but ſhall be expounded ſo as may agree with the Laws of that Kingdom or Nation, to which they particularly do relate; and for this I ſhall give you an example out of Scripture it ſelf. In the Fourteenth Chapter of *Deuteronomy*, and the Twenty ſixth Verſe, there was a Liberty given to the *Jews* in ſome Caſes, and at ſome of their Feaſts, to eat *whatſoever their Soul luſted after, and whatſoever their Soul deſired:* And yet this was not to be expounded univerſally of all Meats whatſoever (in caſe they deſired the ſame) but muſt be meant onely of ſuch Meats as were legally clean, and allowed them to eat by their Law. And thus, when we alſo ſay, That any Man that hath Money enough, may buy Lands when he pleaſeth, it ſhall not be underſtood of any Man whatſoever: For, a [34]Traytor, or a *Jew*, or one that is convicted of Felony, or an Alien cannot purchaſe Land in *England;* but it ſhall be underſtood of one that is by Law enabled ſo to do: And ſo in like manner the words *Cum alia qualibet muliere*, muſt be underſtood onely of ſuch a Woman as is capable of ſuch a gift, which a Woman that [Page 34.]

is a Baſtard, or not of the Blood, or a Jew, or an Alien, *&c.* is not. For in theſe kind of Gifts, as Mr. *Bracton* tells you, *Lib.* 2. *cap.* 11. the Land ſo given is *Liberum tenementum uxoris, & non viri, cum non habeat niſi cuſtodiam cum uxore.*

Secondly, Becauſe I do conceive that *Glanvil* hath immediately contradicted himſelf, unleſs by theſe words, *Cum aliqua alia qualibet muliere,* he underſtands a Woman that is of the Blood of the Donor: For he tells us in the ſame Chapter, and the very next words to thoſe that you cite, That none can give Lands *in remunerationem ſervitii ſui,* to hold good after the death of the Donor, unleſs there be Seiſin in the life time of the Donor, which is untrue, If a Man having a mind ſo to reward his Ser-
[Page 35.] vants, can give Lands with his Woman-ſervant [35]to a ſtranger, or with his Woman-ſervant to his Man-ſervant in Free Marriage. For, where Lands are given *In libero Maritagio,* according to Law, there needs no Seiſin; and where they are given contrary to the Law, *viz.* (to one not of the Blood of the Donor) Seiſin doth onely make it an Eſtate for Life, as my Lord *Coke* ſays in his *Inſtitutes, Part* 1. *pag.* 21. *b.* So that it ſeems clear, *Glanvil* by the words *Cum aliqua alia qualibet muliere,* underſtands one of the Blood of the Donor, as well as I hope hereafter to prove that *Bracton* doth by the words *Cum aliqua muliere.*

Thirdly, Becauſe that though *Glanvil, lib.* 7. *cap.* 1. ſays, A Man may give part of his Heritage to his Baſtard; and that alſo *Bracton* in his Second Book, and beginning of his Seventh Chapter tells us, That Lands may be given *Baſtardo in Maritagium cum aliqua muliere;* yet neither of them hath one word at all to prove, That Lands may be given to a Man *cum Baſtarda,* whereas in this Caſe of Frank-marriage, the party *with whom* the Land is given, not the party *to whom* the Land is given, is the principal thing that is conſiderable herein.

[Page 36.] [36]Fourthly, Becauſe my Lord *Coke* in the *Firſt Part of his Inſtitutes, fol.* 21. *b.* tells us, That if the King give Land to a Man with a Woman of his Kinred in Frank-marriage, and the Woman dieth without Iſſue, the Man in the Kings Caſe ſhall not

hold it for his life, becauſe the Woman was the cauſe of the Gift; but it is otherwiſe in the Caſe of a common Perſon. And to prove this, in the Margent he cites, 9 *H.* 3. *Dower* 202. Whereas, if you look *Fitz-Herberts Graund Abridgment*, 9 *Hen.* 3. *Dower.* 202. the words run thus, *Si le Roy donne certeine tre a un homme ove une feme en mariage, ſi le bar' nad iſſuè pur la feme il naver la tre apres la morte la feme mes ceſt iſſu q' la feme au devaunt enherit, &c.* So that you ſee in theſe Caſes of Free Marriage, my Lord *Coke* makes no difference between theſe words, *Ove une feme*, and theſe words, *With a Woman of his Kinred;* and by the ſame Reaſon, being in the Caſe of Frank-marriage alſo *Glanvile*'s words, *Cum alia qualibet muliere*, are to be underſtood, with any other Woman *of his Kinred onely.* Alſo, which is very obſervable, *Glanvile* was firſt made Juſtice of *England*, 26 *Hen.* 2. [37]as Mr. *Dugdale* tells you in his Chronology of *Lord Chancellors*, [Page 37.] *Lord Keepers, Lord Treaſurers, Juſtices, &c.* which was about Forty five years before the 9 *Hen.* 3. Therefore what likelihood is there, that the Law ſhould be differently taken in ſo ſhort a time, from what it was in the time of *Glanvile*, and eſpecially ſince the Statute of *Weſtminſter*, the Second, was not made till about Threeſcore years after the Nineth of King *Henry* the Third.

Fifthly, Becauſe the Author of the Book called *The Laws Reſolutions of Womens Rights*, Printed by the Aſſigns of *John More*, 1632. doth tell us, That in old time theſe Gifts in Frank-marriage were to be made to them of the Kinred, as well as now. His words in his Thirty third Section of *Frank-marriage, pag.* 73. are theſe. *It was, as I ſuppoſe*, more frequent in the old time, that Men gave Lands with their Daughters in Marriage, then it was at this day; but now as then if a Man liberally and freely, without any Money or other conſiderations, ſave onely Love and Natural Affection, give Lands or Tenements to another Man, with a Woman which is a Daughter, [38]Siſter, or Coſin to the [Page 38.] Donor in Frank-marriage, whether it be *tempore Matrimonii, vel ante, vel poſt.* This word Frank-marriage maketh an Eſtate of Inheritance, *viz.* to the Donees, and the Heirs of their Two

Bodies, and they ſhall hold quite of all manner of Services (except the pure Fealty) till the Fourth degree be paſt; but the Iſſue in the Fifth degree, and his Deſcendant, ſhall hold of the Donor and his Heirs, as they hold over.

Sixthly, Becauſe the Author of the old Treatiſe, commonly called *Fleta*, in the Third Book, and Eleventh Chapter, *De donationibus in Maritagiis*, doth imply that theſe kind of Gifts muſt be made to them *of the Kinred;* his very words are theſe, *Eſt autem quoddam Maritagium liberum ab omni ſervitio ſolutum donatori, vel ejus hæredibus uſque ad tertium hæredem vel uſque ad quartum gradum faciendum & debent gradus ſic computari, ut Donatorius primum faciat gradum, hæres ejus ſecundum gradum, hæres hæredis tertium, & hæres ſecundi hæredis quartum, qui quidem tenebitur ad ſervitium ut ad homagium, prius autem*
[Page 39.] *minime ne Donator vel ejus hæredes per* [39] *homagii acceptionem a reverſione repellantur, ſed in quarto gradu pro eo quod tunc vehementer preſumitur quod terra non eſt pro defectu hæredum donatoriarum reverſura, quia etſi propinquos hæredes non habeat, vel cum habeat & defecerint ad donatorem vel ejus hæredes qui homagium ceperint non erit terra reverſura, dum tamen aliquis remotus* de conſanguinitate *appareat, qui jus in hæreditatem poterit vendicare alioquin evaneſcit homagium, & revertetur. Et cum* de ſanguine *homagium factum fuerit, extunc obligatur homo ad ſervitium, quia ſervitium ſemper ſequitur homagium, &c.*

Seventhly, Becauſe *Bracton, lib. 2. cap. 7. par.* 3. ſays thus, *Et ſciendum quod terra datur aliquando ante ſponſalia & propter nuptias a patre mulieris vel alio parente ipſi marito* cum muliere aliqua *vel utrique ſimul, ſc. tali viro & uxori ſuæ (quod idem eſt) & eorum hæredibus vel alicui mulieri ad ſe maritandam, &c.* And preſently after, *Fit etiam talis donatio ante Matrimonium contractum, aliquando in ipſo contractu, aliquando poſt contractum.* Which in my apprehenſion is as much as to ſay, That this kind
[Page 40.] of Gift can onely be made by the Father, [40] Mother, or ſome other Kinſman, (for the word *parens* or *parent* in Latine and French hath oftentimes that ſignification) and of this opinion

was my Lord *Coke*. For in his *Inſtitutes upon Littleton, pag.* 21. *b.* he tells you, That one of thoſe things incident to a Frank-marriage is, that the Woman that is the cauſe of the Gift, be of the Blood of the Donor, and for this as appears Letter (I) amongſt other Proofs, he in the Margent cites *Bracton, lib.* 2. *cap.* 7. Alſo, which is very conſiderable, Mr. *Bracton* here uſeth this expreſſion, *Cum muliere aliqua*, and yet meaneth a Kinſwoman, and why then ſhould we think that Mr. *Glanvile* doth not mean a Kinſwoman, though he uſe this expreſſion, *Cum alia qualibet muliere*, and eſpecially ſince my Lord *Coke* in the very Page of his *Inſtitutes* laſt mentioned, quotes Mr. *Glanvile, lib.* 7. *cap.* 18. And amongſt others, that expreſſion of his *Cum aliqua muliere in Maritagium;* and alſo in the Margent cites *Glanvile, lib.* 7. *cap.* 1. (the very place on which you frame your Argument) which he would never have done, if he had thought the opinion of *Glanvile* had been contradictory to his [41]own. And if there [Page 41.] had been any ſuch thing, as that the Law in this point had been ſeverally taken in ſo very ſhort a ſpace, as betwixt the time of *Bracton* and *Glanvile*, ſure my Lord *Coke* would in that place have taken notice thereof.

Eightly, and laſtly, The Law appears to be the ſame in this Caſe which it was in *Glanvile*'s time, becauſe as *Littleton* tells us in his 271 *Section*, Gifts in Free-marriage were by the Common Law before the Statute of *Weſtminſter* the Second. Now the Common Law hath always been the ſame, and as my Lord *Coke* tells us in his Firſt Part of *Inſtitutes, fol.* 115. *b.* hath no Controuler in any part of it, but the High Court of Parliament, and if it be not abrogated or altered by Parliament it remains ſtill: But the Parliament hath made no alteration concerning Gifts in Free-marriage, except the ſaid Statute of *Weſtminſter* the Second, *cap.* 1. By which they turned the Eſtate that paſſed by thoſe Gifts in Feeſimple into an Eſtate Tail, (all Inheritances being Feeſimple before the ſaid Statute) ſo that in other reſpects the Law in this Caſe remains as it did. [42]And that this is ſo, I [Page 42.] conceive is very clear, becauſe, I ſuppoſe, neither you, nor any

other perſon, can tell any one particular in which the Common Law is, or hath been altered but by Act of Parliament: Neither could there be any occaſion to alter the Common Law, or to take it otherways in this particular then they did formerly, becauſe ſince there were Eſtates in Tail, there could be no great occaſion to make Gifts in Free-marriages; and therefore my Lord *Coke* ſays in his Firſt Part of *Inſtitutes, fol.* 178. *b.* That ſuch Gifts are almoſt grown out of uſe, and ſerve now principally for Moot Caſes and Queſtions in the Law, that thereupon were wont to ariſe.

Neither is there any weight in what you ſay, That it ſeems to you, that in thoſe elder Ages Baſtards were reputed of the Blood, by the frequent appellation of them by the names of Uncle, Brother, Daughter, Son, and Coſin; for, by the ſame Reaſon you ſhould repute them of the Blood now, this Age being as civil to them in their expreſſions, as any former Age could poſſibly be.

[Page 43.] 43 And for the Precedent you give me, wherein you ſay Lands were given *in libero maritagio* with a Baſtard, I conceive it will not hold;

Becauſe it doth not certainly appear, that *Geva* was a Baſtard; for, in all the *Records* that you cite, ſhe is called Earl *Hugh*'s Daughter; and in one of them, ſhe calls *Randle* Earl of *Cheſter* her Coſin, which makes it probable that ſhe was *Legitimate*, eſpecially, ſince I do not find by any *Deed*, *Record*, or *Author* whatſoever, that ſhe is at any time called a Baſtard.

As for your ſaying, That it is plain out of *Ordericus, p.* 787. that *Geva* was a Baſtard, becauſe, ſpeaking of *Hugh Lupus* his death, he adds theſe words, *Richardus autem pulcherrimus puer quem ſolum ex Ementrude Filia Hugonis de Claromonte genuit.* I am not ſatisfied, but he might as well mean, that he was the *onely Son* which Earl *Hugh* had by *Ementrude*, as that he was the *onely Child* that he had by her. For, there is no neceſſity to take the word *Solum adverbially;* neither is it marked as an *Adverb* in *Ordericus* his Book, though it be ſo in yours, and yet

in his Book *Adverbs* [44]are uſually marked. And though that [Page 44.]
Ordericus (if his meaning were ſo) might have worded it more clearly, yet he many times expreſſeth himſelf worſe then he doth here, and particularly *Pag.* 871. And though he tells us, *Pag.* 522. that *E pellicibus plurimam ſobolem utriuſque ſexus genuit;* yet he doth not ſay that *Geva* was one of them.

Neither is there any force in what you alledge, that probably if *Hugh Lupus* had any more *Legitimate Children* by his Wife beſides Earl *Richard,* either Son or Daughter, that *Ordericus* would have Recorded them as well as others, being indeed his uſual method through the whole courſe of his Hiſtory. For he could have no *Legitimate Son* but Earl *Richard,* unleſs he had another Wife beſides *Ementrude* (*Ordericus* being expreſs therein) and poſſibly for ſome Reaſons he might have another Wife beſides *Ementrude:* But whether *Geva* was by a Firſt or ſecond Wife, I know no neceſſity to conclude that *Ordericus* ſhould Record her, I finding no ſuch uſual method of his, as this which you ſpeak of: For he doth not (that I ſee) make it his buſineſs to Record what [45]Wives or Children the Earls of *Cheſter,* and [Page 45.]
other great Men had, but onely ſpeaks of them occaſionally, and ſo he alſo doth of ſome of their *Illegitimate Children;* but if he made it his deſign to give an exact account of theſe things, he ought to reckon *Geva,* either amongſt the lawful, doubtful, or illegitimate Children of *Hugh Lupus.*

And as to your Objection, That if *Geva* had been Legitimate, her Iſſue ought rather to have ſucceeded into the Earldom of *Cheſter,* then *Randle de Meſchines,* after the death of *Richard* Earl of *Cheſter,* That doth not at all follow, becauſe, it is poſſible the Earldom of *Cheſter,* at that time (as moſt times Earldoms anciently were) might be Entailed on the Heirs-males onely, and then the Male Line being extinct, why might not the King confer it as well upon *Randle de Meſchines,* who was a near Kinſman, as upon a ſtranger? Which later courſe is alſo uſual at this day. And it is very probable, that the Earldom was Entailed on the Heirs-males onely; for *James York* in his *Union of Honor, p.* 105.

ſays, That this *Randle* was made Earl by Grant of King *Henry*
[Page 46.] the Firſt; and [46]if ſo, it came not to him by Deſcent: So that all which you here object is fully anſwered. But if it had been ſo, that the Earldom had been to Deſcend to the Heirs General; if *Geva* was Daughter of *Hugh Lupus* by another Wife, beſides *Ementrude;* then the Earldom of *Cheſter* would have Deſcended from Earl *Richard* to *Randle Meſchines* by his Mother, being Aunt of the whole Blood to *Richard*, and not to his Siſter *Geva*, or her Iſſue, they being but of the Half Blood to him.

And whereas you deſire me to ſhew you a Precedent whereever the Heirs of an Aunt inherited, before the Heirs of a Siſter, both legally born, and no Heirs-male left, unleſs in Caſe of Forfeiture by Treaſon, or ſome other great cauſe to hinder the ſame. I ſhall now ſhew you where an *Honor* in ſuch a Caſe came to the Heirs of the younger Siſter, and not to the Heirs of the elder Siſter, which is full as much as if it were done in the Caſe of a Siſter and an Aunt. If you peruſe the *Magazin of Honor*, Collected by Mr. *Bird*, and inlarged by Sir *John Doderidge*, One of
[Page 47.] His Majeſties Juſtices of the *Kings Bench, pag.* 96. you [47]will there find, That whereas *Radulfe*, Lord *Cromwel*, being a Baron by Writ, died without Iſſue, having Two Siſters, and Coheirs, *Elizabeth* the Eldeſt married to Sir *Thomas Nevil*, and *Joan* the Younger married to Sir *Hunt Bourcher:* He who had married the Younger Siſter, was called to the Parliament as Lord *Cromwel*, and not the ſaid Sir *Tho. Nevil*, who had married the Elder Siſter; ſo that you ſee no convincing Argument can be brought from the enjoyment of the Earldom by *Randle de Meſchines*, however the Caſe prove to be.

I do therefore ſtill conceive, That it is very clear that Lands or Services never were in any Age paſſed, *In libero Maritagio* with a Baſtard, or with any one that was not of the Blood, but onely for Term of Life, and that with Livery and Seiſin; and conſequently, all perſons to whom ſuch *Deeds* or *Grants* were made (unleſs for life only) are certainly to be concluded *Legitimate*; and if you will bring a *Convincing Precedent* to the con-

trary, do not produce a *Record* or *Deed* of Lands or Services given with one that you ſuppoſe to be a Baſtard, or not of the Blood; but firſt clearly [48]prove, That the party was certainly a [Page 48.] Baſtard, or not of the Blood, by ſome *Deed*, *Record*, or *Ancient Hiſtory*, and ſhew Lands or Services ſo given with her, and then there will be ſome ſtrength in ſuch a Precedent.

But what will you ſay, If this *Deed* which you alledge to be made to *Geva*, will not at all concern *Amicia*, if *Geva* were a Baſtard. If you peruſe what my Lord *Coke upon Littleton*, ſays, *pag.* 21. *b.* he will there tell you, That theſe words *In liberum Maritagium*, are ſuch words of art, and ſo neceſſarily required, as they cannot be expreſſed by words equipollent, or amounting to as much. As if a Man give Lands to another with his Daughter *In connubio ſoluto ab omni ſervitio*, *&c.* yet there paſſeth in this Caſe but an Eſtate for Life; for ſeeing that theſe words *In liberum Maritagium* create an Eſtate of Inheritance againſt the general Rule of Law, the Law requireth that they ſhould be legally purſued. And in this Deed to *Geva*, the words are not *In liberum Maritagium*, but *In libero Conjugio;* and ſo are but like the words *In connubio ſoluto ab omni ſervitio*, which make but an Eſtate for [49]Life, and ſo might be paſſed either [Page 49.] to a Baſtard, or any other perſon whatſoever. And if you look well on the Deed to *Geva*, it is worded as if it intended onely an Eſtate for Life, there being no mention of her Heirs, and running alſo in the ſingular number, *Et teneat bene & in pace*, *&c.* *Ut melius & liberius tenuit*, *&c.* Alſo, if you obſerve my Lord *Coke upon Littleton*, a little before on the ſame *Page*, he will tell you, that Four things are incident to a Frank-marriage: The firſt whereof is, That it be given for conſideration of Marriage, either to a Man with a Woman, or as ſome have held, to a Woman with a Man, (and with this *Bracton*, *lib.* 2. *cap.* 7. doth accord.) And the fourth thing is, That the *Donees* ſhall hold freely of the *Donor*, till the fourth degree be paſt, (with which the old Treatiſe called *Fleta*, *lib.* 3. *cap.* 11. doth agree.) For both which Reaſons, this Gift cannot be a Gift in Frank-marriage,

becauſe, what is here given, is given to *Geva* alone, and not to an Husband with her; as alſo, there are here *no Donees*, but *one Donee* onely, and the Eſtate was not to continue till the fourth degree [50]was paſt, but was onely an Eſtate intended for the Life of *Geva*, as appears before; whereas what was given by Earl *Hugh* to *Ralph Mainwaring* with his Daughter *Amicia*, and by *Ralph Mainwaring* to *Henry de Alditelegh* with his Daughter *Bertred*, was given in Free-marriage, and their Heirs are mentioned in both the *Deeds:* It remains therefore clear, That the Deed to *Geva* was not a Gift in Frank-marriage, and is alſo very uncertain, whether *Geva* was a Baſtard, as you ſuppoſe.

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The ſecond Reaſon alledged to prove, That *Amicia* was Legitimate, hath alſo yet its full ſtrength, and is not at all weakned by any thing that you have ſaid: For, I think it will ſtill appear, that Earl *Hugh* was much Elder then his Wife *Bertred;* and therefore probably had a former Wife, who dying and leaving him no Iſſue-male, it is no wonder at all, if he that had ſo great an Eſtate, did afterwards marry a Lady that was very much younger than himſelf. And though you do affirm, That Earl *Hugh* could not be above Seven or eight years older then *Bertred* his Wife, I ſuppoſe I ſhall make it appear, that [51]there might be many more years betwixt them, and that from the Argument upon which you your ſelf do reckon, *viz.* The Marriage of *Robert* Earl of *Gloceſter*, with *Mabill* Daughter and Heir of *Robert Fitz-Haimon*. For whether the ſaid *Robert* Earl of *Gloceſter*, according to *Selden*, married the ſaid *Mabill* in the year 1109. or according to *Stow* in the year 1110. The ſaid *Mabill* might poſſibly have *Maud*, her ſecond Daughter in the year 1112. Which *Maud*, if ſhe was married in the year 1128. when ſhe was Sixteen years of Age to Earl *Randle de Gernoniis*, might have her Son *Hugh Cyveliok* in the year 1129. Which if true, the ſaid Earl *Hugh* was Fifty two years of age at his death, for he died in the year 1181. And if ſo, then he was four years above twice the age of *Bertred;* for ſhe was aged but Twenty four years when the ſaid Earl *Hugh* died, as appears *Rot. de*

[Page 51.]

Dominabus pueris, &c. In Scacc. penes Remem. R. ſub Tit. Linc. Rot. 1. And it is certain, That the ſaid Earl *Hugh* was Earl of *Cheſter* about four years before his Wife *Bertred* was born, beſides what age he was of, when his Father died: But I may very well abate [52]you ſeveral years of this accompt, and yet Earl *Hugh* be a great deal older then his Wife *Bertred.* [Page 52.]

And as to the Third and fourth Reaſons, they were onely urged as concurrent Proof, with the Argument brought from the words *In libero Maritagio,* yet I conceive there are many more circumſtances than you take notice of: And therefore when I have obſerved them all, *viz.* That in the firſt Deed, *Hugh Cyveliok*'s Counteſs is a *Witneſs,* by which the ſaid Earl gives Services to the ſaid *Amicia* in Free-marriage, and calls her his Daughter: And in the Second, That *Ralph Mainwarings* Daughter is alſo called *Bertred* after the Counteſs, and *Randle* Earl of *Cheſter,* a *Witneſs* to what was given with her in Free-marriage to *Henry de Alditelegh,* who was Great Grand-father to the Famous *James Audley* that warred in *France.* And in the third, How *Roger Mainwaring* in his Gift to the Monks of *Deulacreſs,* calls *Randle* Earl of *Cheſter* and *Lincoln* his Uncle; and how, as appears in Mr. *Dugdale*'s *Antiquities of Warwickſhire, pag.* 88. *Ralph Mainwaring* was with the ſaid Earl at *Coventry,* and a [53] *Witneſs* to his Charter to his Burgeſſes there; as alſo, how *Roger de Meinwarin* and *Henry de Aldithele,* who married his Siſter, *Monaſt. Angl. Part* 1. *pag.* 891. are *Witneſſes* to the Deed of *Randle* Earl of *Cheſter* and *Lincoln,* concerning his Abbey of *Deulacreſs*; as alſo, how the ſaid *Henry de Audley, Monaſtic. Angl. Part* 2. *pag.* 509. was a *Witneſs* to the Deed of *Robert de Ferraris,* whoſe Mother was one of the Siſters and Coheirs to the aforeſaid Earl *Randle;* as alſo, how *Raph Menilwaringe* or *Mainwaring,* as appears by your Book, *Part* 2. *pag.* 130. 131. 139. 143. and 144. is a *Witneſs* to one Deed of *Hugh Cyvelioks,* and to three other Deeds of the ſaid Earl *Randle,* (who in ſome of them is alſo ſtiled Duke of *Britain,* and Earl of *Richmond*) I ſhall leave it (without any more words) to the Reader to judge, [Page 53.]

whether theſe Circumſtances be not ſuch as do ſhew more great and conſtant intimacy betwixt the ſaid Two Families, then probably would have been, if *Amice* had been a Baſtard; and if ſo, they ſtrongly concur to prove her Legitimate, which is all the uſe that is made of thoſe Arguments.

[Page 54.] [54]And although you Object, That you frequently find in *Hiſtories* and *Records*, that *Baſtards* are called Coſin, Brother, Uncle, Son, and Daughter. I grant it to be true, yet that is either done where the perſons came to be very great, as *Robert* Earl of *Glocceſter* did, or elſe, are called ſo by thoſe that write the Hiſtories of them, or elſe are ſo termed by their Relations, who out of their Humility did condeſcend ſo to ſtile them upon ordinary occaſions, though it were not their due. But I believe you can hardly find one that you can certainly prove to be a *Baſtard*, or the Son of a *Baſtard*, who doth preſume in a *Deed* to call ſo great a perſon, as the Earl of *Cheſter* was, his Brother, or Uncle, unleſs he came to be a very great perſon himſelf.

Alſo I do verily believe, that *Richard Bacun*'s Mother was not a Baſe Daughter of *Hugh Cyvelioks*, nor any Daughter of his at all, becauſe, as you may ſee *Monaſt. Angl. Part* 2. *pag.* 267. When *Richard Bacun* did found the Priory of *Rouceſter* in *Staffordſhire*, his Uncle *Randle* Earl of *Cheſter* was then living, and

[Page 55.] a *William* was then Archbiſhop of *York*, [55]and one whoſe name did begin with *R.* was then Biſhop of *Cheſter;* but if the Catalogue of Archbiſhops and Biſhops at the end of *Iſaackſon*'s Chronology be right, there was no *William* Archbiſhop of *York*, during the life of *Randle Blundevile;* nor any Man Biſhop of *Cheſter*, whoſe Chriſtian name began with *R.* except *Richard Peche*, who died in the year 1182. At which time *Randle Blundevile* could not be of age to Seal any kind of Deed, becauſe *Bertred*, the ſaid *Randle*'s Mother, was then but about Twenty five years of age. I rather think that *Bacun*'s Uncle, mentioned *Monaſtic. Angl. Part* 2. *pag.* 267. was *Randle de Gernoniis;* for he was Earl from the year 1128. to about the year 1152. And in the year 1143. as *Iſaackſon* ſays, *William* Sifters Son to King

Stephen, was Archbiſhop of *York*, but was ouſted of it again, till about 1152. or 1153. And *Roger Clinton* from the year 1128. until the year 1149. was Biſhop of *Leichfield* and *Coventry;* which Biſhop in elder ages, was the ſame with the Biſhop of *Cheſter*. But that *Randle* Earl of *Cheſter*, who is mentioned *Monaſt. Angl. Part* 2. *pag.* 268. was indeed [56]*Randle Blundevile*, [Page 56] who was Earl from about the year 1180. till about the year 1232. (*Roger Conſtable* of *Cheſter*, who lived in the time of no other Earl *Randle*, being a Witneſs to the ſaid Deed) But what the ſaid *Randle Blundevile* did, was but by way of Confirmation, which in former times was very uſual to be obtained from Princes ſeveral Generations after; as to inſtance in one Caſe, inſtead of many. If you read *Monaſtic. Angl. Part* 2. *pag.* 24 & 25. you will find King *Henry* the Firſt, Reciting and Confirming what had been given to the Priory of *Huntendune*, and *Pag.* 27. you may find King *Henry* the Third doing the like; and yet there was a greater ſpace betwixt King *Henry* the Firſt, and King *Henry* the Third, than there was betwixt *Randle de Gernoniis* and *Randle Blundevile*. So that you may ſee, ſuch great perſons as theſe may have ſome Children which our Hiſtorians take no notice of: And you may alſo diſcover upon what ſlender Grounds you have charged *Richard Bacun*'s Mother with Baſtardy, ſhe being ſo far from being a Baſe Daughter to *Hugh Cyveliok*, that ſhe was no Daughter of his at all; but [57]ſhe was Siſter to *Randle* [Page 57.] *de Gernoniis*, and Daughter to *Randle Meſchines*.

But I ſhall now come to Anſwer the Reaſons that you bring to prove, That *Amice* was a Baſtard. And your firſt is this.

If Hugh Cyveliok *had no other Wife but* Bertred, *then* Amice *muſt be certainly a Baſtard; for ſhe was not a Daughter by* Bertred *as is granted on all ſides: But* Hugh Cyveliok *never had any other Wife but* Bertred. Ergo, Amice *was a Baſtard. And you ſay the Minor is to be proved by the Affirmer; For,* Oportet Affirmantem probare.

To this I ſay,

Firſt, That by this Rule you your ſelf are as much bound to prove her a Baſtard, as I am bound to prove that *Hugh Cyveliok* had a former Wife; for you as clearly affirm that, as I affirm the other; and there is no reaſon why Suppoſitions ſhould paſs for Proofs any more in your Caſe, then they ſhould do in mine.

Secondly, That leſs Proof by many degrees will ſerve to prove
[Page 58.] a thing that [58]was done long ſince, then will be required to prove that which was done lately. To inſtance in one Caſe, which may ſerve inſtead of many: If you be to prove a Deed that was lately Sealed, it will be expected you produce the Witneſſes who were preſent at the Sealing and Delivery thereof. If your Deed was ſealed a good while ago, the proving of the Hands will be required: But if the Deed be ſo old, that none alive could know the Hand-writing of the Witneſſes, then the Deed carries its own Proof with it: And the like reaſon there is in all Caſes of Antiquity, and eſpecially in thoſe that are ſo very ancient as this is. For, if I did onely prove her called a Daughter, being it is ſo long ſince, ſhe ought to be preſumed Legitimate, unleſs the contrary do appear. For the proving ſhe was not by *Bertred*, does not prove that ſhe was a Baſtard; but onely proves that ſhe was either a Baſtard, or elſe by a former Wife: And our Law at this day is, That a Baſtard cannot be proved a Baſtard but in his life time; and ſo it anciently was alſo, as appears by
[Page 59.] the old Treatiſe called *Fleta, lib.* 6. *cap.* 39. *ſect.* 14. [59]where it is thus ſaid, *Si autem poſt mortem alicujus opponatur Baſtardia, non allocabitur; cum defunctus ad talem exceptionem reſpondere non poterit.* Now, if a Perſon cannot be proved a Baſtard immediately after his death, becauſe he cannot anſwer for himſelf, What reaſon is there to charge *Amice* with Baſtardy ſo many hundred years after her deceaſe.

Thirdly, I do conceive that the Paſſing of Services *In libero Maritagio* with *Amice*, doth abſolutely prove that ſhe was a lawful Child, and by conſequence by a former Wife: Alſo, if you take notice of what Sir *Henry Spelman* writes in his *Gloſ-*

ſary, on the word *Baſtardus*, you will find him quoting *Couſtum. du Normand. Artic.* 77. *in Annot.* thus, *Quoties enim agitur de honore vel commodo Filiorum, appellatione Filiorum non comprehenduntur Baſtardi.* I ſuppoſe therefore in this Caſe, *Amice* would not have been ſtiled as ſhe is in the ſaid Deed, unleſs ſhe had been a Legitimate Daughter.

Fourthly, If this Argument of yours would hold as you have framed it, we ſhould have almoſt nothing but Baſtards [60] in the [Page 60.] Ancient times: For if all muſt be Baſtards, if we could not tell who their Mothers were, nor directly prove their Fathers married, we might then conclude, moſt perſons to be Baſtards that lived in the Firſt and ſecond Centuries after the Conqueſt. I ſhall not offer to put the Caſe upon any other Family but my own (though it doth reach a multitude of others.) But as to my own, if I miſtake not, I find Eight perſons whoſe Wives we are altogether ignorant of, and Six of thoſe perſons left Iſſue, all which Iſſue, by your Argument would be Baſtards; which I am confident you cannot, nor will not ſuppoſe. I ſhall inſtance onely in one, *viz. Roger Melinguarin* who in the Reign of King *Henry* the Firſt, as you may ſee in the Firſt Part of *Monaſticon Anglicanum*, *p.* 985. gave *Plumley* (a place in *Cheſhire*, near to *Peover*) to the Abbey of S. *Werburge* at *Cheſter;* and as it appears by the ſaid Record; the ſaid *Roger Mainwaring* had Three Sons, *William*, *Randle*, and *Wido*. Now if you ſhould affirm, That the ſaid *William Randle* and *Wido*, were Legitimate, which I verily believe you will not ſcruple to do, I could thus frame [61] your own [Page 61.] Argument againſt you.

If Roger Melinguarin *had no Wife, then*, William, Randle, *and* Wido, *Sons of the ſaid* Roger *were certainly Baſtards: But* Roger Melinguarin *aforeſaid had no Wife.* Ergo, &c.

Now if this Argument would hold againſt *Amicia*, it would alſo hold againſt theſe three Children of *Roger Mainwaring*, and indeed againſt all other perſons whoſe Fathers we could not directly and *in terminis* prove to have been married (the Proof lying on the Affirmers ſide) the Abſurdity of which is ſo great,

that you your ſelf cry, *God forbid all Children ſhould be concluded Baſtards, whoſe Mothers cannot be proved.*

But if it be poſſible for a Man to have one Wife, and we not know who ſhe was, Why may not a Man have two Wives, & we be ignorant who the former Wife was.

Yea, but (ſay you) *in this Caſe we find a Wife certainly Recorded, and a Son and Four Daughters, who were afterwards Coheirs, and carried away all Earl* Hugh's *Lands, clearly proved by Records and Ancient Hiſtorians; and alſo Earl* Hugh *is certainly known to have many Baſtards, which gives occaſion of ſtrong*
[Page 62.] *ſuſpition that* [62]Amice *was a Baſtard; and therefore here is a neceſſity of proving a former Wife, which you firmly believe Earl* Hugh *never had.*

For anſwer hereunto, I ſay that I do believe if *Randle Blundevile* had left any Iſſue Male, you had not met with ſuch Proof of the Four Siſters his Coheirs, as you now do: For, the falling of that great Eſtate to them, they being of the whole Blood to their Brother, is the occaſion of their being Recorded, and ſo much taken notice of by Hiſtorians. And though this Earl *Hugh* their Father had ſome Iſſue that was not lawful, (as many of the great perſons of that age had,) yet that hinders not but he might have two Wives; neither had he ſo many Baſtards as you lay upon him, for, I have ſhewed before, That *Richard Bacun*'s Mother was not any Child of his: And I do conceive I have by neceſſary conſequence proved, That the ſaid Earl *Hugh* had a Wife, who was Mother to *Amicia*, though we cannot tell who ſhe was. And it is no great wonder, if the old Hiſtorians do not mention who *Hugh Cyveliok*'s firſt Wife was, for, there is
[Page 63.] not any of the Antient Writers that I [63]know of, who doth make it his buſineſs to tell what Wives and Children this Earl *Hugh* had; nay, I think there is no Antient Hiſtorian that doth mention his Wife *Bertred:* And therefore, we had never known who ſhe had been, but onely becauſe ſhe ſurvived her Husband, and was mentioned in the *Inquiſition* taken after his death, and becauſe her Daughters after the death of their Brother came to be Heirs.

Alſo, it is very hard to tell who were Wives to *Walter Gifford*, the Firſt Earl of *Buckingham; John* of *Henault*, Earl of *Cambridge; Baldwin de Ripariis*, Earl of *Devonſhire; William Fitz-Piers*, Earl of *Eſſex; Robert de Ferrars*, the Firſt Earl of *Ferrars*, (and as ſome ſay of *Derby*) *Robert de Ferrars*, Second Earl of *Ferrars; Ralph de Maunt*, Earl of *Hereford; William de Iper*, Earl of *Kent; William de Romara*, Earl of *Lincoln; Morchar*, Earl of *Northumberland; Goſpatrick*, Earl of *Northumberland; Robert Mowbray*, Earl of *Northumberland*, and ſeveral others; and therefore, what great wonder would it be for *Hugh Cyveliok* to have a former Wife, and yet we to be ignorant who that former Wife was.

[Page 64.] [64]Your ſecond Reaſon againſt *Amicia* will not hold, For though what is given in Frank-marriage, be given in conſideration of Marriage, yet it cannot properly be called a *Portion*. For, ſuch Gifts may be made either before Marriage, at Marriage, or after Marriage, as you may ſee *Coke on Littl.* 21. *b.* And beſides, what is given as a Portion remaineth to the Husband for ever, and is wholly at his diſpoſal; but Lands given in Frank-marriage, ſhall after the death of the Husband and Wife (if they die without Iſſue) revert to the Donor: Alſo any perſon that pleaſeth may give a Woman a Portion, but none but one of the *whole Blood* can give Lands with a Woman in Frank-marriage, as Mr. *Hughes* ſays in his *Grand Abridgment of the Law, pag.* 970.

But the reaſon why you call it a *Portion*, is, Becauſe you would have it thought that this was all her Portion, and thence would infer, that ſhe was Illegitimate, becauſe ſo very little was given with her: But I think any Man that will weigh things indifferently wil eaſily conclude, That if ſhe had been but a Baſtard, yet being a Baſtard of ſo great a perſon, [65]ſhe would [Page 65.] have had a great deal more given her then theſe Services, upon thoſe terms that they were given, and eſpecially conſidering how you have obſerved out of Sir *Henry Spelman*, that Baſtards were not in ſuch diſrepute in thoſe former ages, as they are now; and beſides, I have made it appear, that Sir *Ralph Mainwaring* was

no inconſiderable perſon, and therefore would deſerve a great deal more. And you may alſo find in one of the Deeds before-mentioned, that though the ſaid Sir *Ralph* had Iſſue Male, yet he gave that which was of far greater value in Free-marriage with a Daughter of his own: But I perceive, if this Deed of Earl *Hughes* had been loſt, you would not have believed that Sir *Ralph Mainwaring* had had any thing with *Amicia*, becauſe then it would not have appeared, which is a ſtrange way of arguing, about things that were done ſo long ſince. And, if this be a good reaſon, I wonder you do believe that Earl *Hugh* had any Portion with his Counteſs *Bertred*, becauſe (for ought I yet know) it doth not appear that he had.

[Page 66.] [66]As for your alleadging how the other Four Siſters were married, I have anſwered that before; and though you ſay, That if *Amice* had been Legitimate, ſhe being of the firſt Venter, would have been more worthy then thoſe of the ſecond, though that be true when the Siſters Claim as Heirs to their Father; yet when they come to Claim as Heirs to their Brother (as in this Caſe) if there be Siſters of two Venters, and the Brother be of the ſecond Venter, then the Siſters that are of the ſecond Venter ſhall be preferred before thoſe of the firſt Venter, becauſe thoſe of the ſecond Venter are of the whole Blood. I ſhall therefore here conclude what I have to ſay to your ſecond Reaſon, when I have told you that I do not underſtand why you call this Gift of Earl *Hughs* (as you do in ſeveral places) *A Releaſe of the Service of one Knight's Fee.*

Your third and laſt Reaſon, I conceive hath no weight at all; For thoſe Hiſtorians and others which you ſpeak of there, do not take upon them to give an account of all the Children of *Hugh*

[Page 67.] *Cyveliok*, but onely to tell who were [67]the Heirs of *Randle Blundevill;* and of this you are ſo ſenſible, That you confeſs this Argument not to be evincing, and yet it is as ſtrong as your firſt Reaſon. But I cannot but wonder when you name Mr. *Cambden* to be one of thoſe that take no notice of *Amicia*, being you well know that he hath mentioned her in his *Britannia*, in his De-

ſcription of the County of *Cheſter;* and though not as a Coheir to her Brother *Randle*, (for that ſhe was not) yet without the leaſt brand of being a Baſtard: Alſo all thoſe Judges and Heralds, of whom you have formerly heard, and all other perſons (except your ſelf) which have ſeen my Deeds, have from the Expreſſions therein, been fully convinced, that ſhe muſt needs be Legitimate; and amongſt others, that worthy and judicious perſon, *William Dugdale* Esquire, our *Norroy*, King of Arms, is of the ſame judgment, as will appear in his *Hiſtorical Diſcourſe of the Baronage of* England (which will be ſhortly ready for the Preſs.) In which, from the Authorities and Reaſons there briefly cited, he concludes, That *Bertred* was a ſecond Wife, and that *Amicia* was a Lawful Daughter [68]of the ſaid Earl *Hugh* by a former Wife, though it be not known who that Wife was, and which is worthy obſervation, the ſaid Mr. *Dugdale* hath heard you alleadge your Reaſons to the contrary, but did not find them ſuch as to be ſatisfactory to him: I hope therefore that I ſhall not becauſe of my Relation to that Noble Lady, be thought to be Partial or Singular herein, ſince that it appears ſhe ſtands vindicated by the Sentence of ſo many knowing and unconcerned perſons; but it will neceſſarily follow, that you have dealt very ſeverely with your ſaid Grand-mother, and that upon ſuch weak Grounds, as your *Three Pretended Reaſons*, which will not prove her to be a Baſtard, if thoſe Arguments that were brought on her behalf, were all laid aſide. [Page 68.]

I have now anſwered the Objections which you have brought againſt *Amicia*, the Wife of Sir *Ralph Mainwaring;* but before I conclude, I ſhall acquaint you, and the Reader, with two Deeds; the firſt whereof, doth belong to *Thomas Ravenſcroft* of *Bretton*, in the County of *Flint*, Eſquire; and the other to *Henry* [69]*Mainwaring* of *Kermincham* in *Cheſhire*, Eſquire, the words whereof do here follow, as they were coppied out ſeveral years ſince from the Originals by *William Dugdale* Eſquire. [Page 69.]

SCiant præſentes & futuri quod ego Alanus de Boidele dedi & quiet' clam' fratri meo Willielmo de Boidele & hæred' ſuis Doccliſton in feod' & dominicis cum omnibus pertin' infra Limam. Tenend' & habend' de Domino meo Ranl' Com' Ceſtr' & hæred' ſuis faciend' ſervicium de prædict' terr' ſc. De quatuor feod' & dimid' prænominato domino meo Ranl' Com' Ceſtr. & hæred' ſuis. Et ego vero Alanus de Boidele & hæred' mei prædict. terr. cum omnibus pertin' prænominato Willielmo de Boidele & hæred' ſuis contra omnes homines & feminas cum pertin' warantiſab. Et quia volo quod hec mea donatio & quiet' clam' ſtabilis & inconcuſſa & rat' permaneat præſenti ſcripto ſigillum meum appoſui. His teſt' Domino Ranl' Comite Ceſtr' domino Rad' de Mainwaringhe tunc Juſticiar' Ceſtr' domino Roberto de Monte alto, Domino Hug' Diſpenſar' Domino Ham' Sen' de Maſcy, Domino Warino
[Page 70.] *de Vernun, Domino Willielmo de Venables. Toma fil' [70] Willielmi de Goulborn, Petro de Bekering. Rob' tunc perſona Gropenhale ſcriptor' hujus ſcripti & multis aliis.*

SCiant & omnes præſentes quam futuri quod ego Robertus dominus Moaldie & ſeneſcallus Ceſtric, conceſſi & præſenti Karta confirmavi domui ſce' Werburge Virginis in Ceſtria & Monachis ibidem Deo ſervientibus totam Villam de Gooſtree plene & integre cum omnibus pertin' ſuis in puram & perpetuam elymoſynam pro ſalute anime mee & animarum prædeceſſorum meorum, liberam quietam & ſolutam ab omni ſeculari ſervicio & omni ſeculari exactione. Ita quod in eadem Villa de Gooſtre nihil ad opus meum vel hæredum meorum retinui præter elemoſynam & orationes & tantam libertatem in ipſa eadem Villa prædicte domui & prædictis Monachis conceſſi quod in poſterum nullus hæredum meorum quicquid libertatis ſuperaddere poſſit. Et ut hec mea conceſſio rata & inconcuſſa permaneat imperpetuum eam ſigilli mei appoſitione roboravi. Hiis teſtibus Rad' de Menilwar' tunc Juſticiar' Ham' de Maſci Gwar de Vern' Rad' fil' Sim' Plo' de Orreby. Sim' de Thuſchet' Rog' de Menilwar' Willielmo de Venables. Toma Diſ-
[Page 71.] *penſatore [71] Rob' fil Picot' Petro Clerico Com' Ricardo de Vern'*

Rob' de Menilwar' Brito Paulum Patr' de Moberl' Liulf' de Twamlow. Peers de Surtin' Raii' de Praerf' Ricardo de Kingsl' Jo' de ſancta Maria, & multis aliis.

I ſhall alſo deſire you to take notice of what you your ſelf have obſerved in your *Hiſtorical Antiquities, pag.* 160. how that Earl *Randle de Gernoniis* (as doth appear by the Charter there mentioned) did give the Office of *Conſtable* of *Cheſhire*, in Fee to *Euſtace*, Baron of *Halton*, and his Heirs; and did conſtitute the ſaid *Euſtace* (to uſe the words of the ſaid Charter) *Hæreditarie Conſtabularium & ſupremum conciliarium poſt me & ſuper omnes optimates & Barones totius terræ meæ.* As alſo *Pag.* 161. how the Baron *de Montealto* or *Moald*, being *Dapifer*, *Seneſchal*, or *Steward* of *Cheſhire* in Fee, had the ſecond place, which is alſo confirmed by ſeveral Deeds mentioned by you, *Pag.* 129. 130. 139. 144. and 162. In all which, the *Conſtable* and *Steward* are named before the Juſtice of *Cheſter*, and all the other Barons; which being [72]ſo, it will be difficult to give a Reaſon (if *Amicia* [Page 72.] was but a Baſe Daughter) why Sir *Ralph Mainwaring*, in the Deed aboveſaid of *Alan de Boidele*, is named as a Witneſs next to the Earl of *Cheſter*, and before Sir *Robert de Monte alto* or *Moald*, Steward of *Cheſhire*, and ſo many of the other Barons; as alſo in a Deed mentioned in your Book, *Pag.* 139. why the ſaid *Ralph Mainwaring* is named next to the Counteſs of *Cheſter*, and before *Roger*, Conſtable of *Cheſhire*; as alſo, why in a Deed in the 143 *Page* of your Book, the ſaid *Ralph Mainwaring* is again named next to the ſaid Counteſs, and before *Ralph*, the Steward of *Cheſhire*.

But if *Amicia* was a Legitimate Daughter, the reaſon thereof will be apparent: For though it be true, that the Husband cannot be Ennobled by the Marriage of his Wife, yet the Earl of *Cheſter*, being a Count *Palatine*, and one that is confeſſed by you, *Page* 152 & 159. to have Royal Authority within himſelf, and not unfitly to be ſtiled a *Petty King*, having under him his Conſtable of *Cheſhire* in Fee, in imi-[73]tation of the Lord High [Page 73.]

Conſtable of *England*, and his Steward of *Cheſhire* in *Fee*, after the example of the Lord High Steward of *England*, and his Noblemen about him, in imitation of the Barons of the Kingdom; as alſo his Chamberlaine, who ſupplieth the place of Chancellor, and his Juſtices of *Cheſter*, (who have like power to the Judges of the Courts of *Kings Bench* and *Common Pleas*,) as alſo a Baron of the *Exchequer*, a Sheriff, and other Officers proportionable to thoſe of the Crown: It is no wonder at all, if theſe great perſons did voluntarily give Precedence to Sir *Ralph Mainwaring* during his life, in regard he had married a lawful Daughter to one of their ſaid Earls.

Add hereunto, that when Earl *Hugh Cyvelioke*, did by his Charter mentioned by you, *Page* 131. acquit the Abbot and Monks of *Stanlaw*, of ſome Toll in *Cheſter*, (which could be but a little before the ſaid Earl's death, becauſe, the ſaid Earl died in the year 1181. And the Abbey of *Stanlaw*, as is confeſſed by you, *Page* 267. was Founded but in the year 1178.) The ſaid Earl
[Page 74.] in [74]his ſaid Charter (contrary to all former Precedents which I have ſeen) doth name the Juſtice of *Cheſter* before both the Conſtable of *Cheſhire*, and Steward of *Cheſhire;* and the Reaſon thereof I ſuppoſe to be, becauſe the ſaid *Ralph Mainwaring*, who was Son in Law to the ſaid Earl, was then Juſtice of *Cheſter*, as he alſo was, ſome years in the life time of *Randle Blundevill;* though the ſaid *Ralph*, as appears, by his aforeſaid Deed made to *Henry de Alditelegh*, did afterwards part with the ſaid Office, *Philip de Orreby* being Juſtice of *Cheſter*, when the ſaid *Philip* was a Witneſs to the ſaid Deed.

Now this preeminence could not be given to the ſaid *Ralph*, becauſe he was Juſtice of *Cheſter*, (that being below the Offices of Conſtable and Steward, as appears before) but becauſe of the Relation of the ſaid *Ralph*, to the ſaid Earl: But as this reſpect was too great to have been ſhewed him, if he had onely married one that was a Baſtard, ſo it doth not conſiſt with your conceits, that the ſaid *Amice* was Illegitimate, and that the ſaid *Ralph*
[Page 75.] had nothing elſe with her, but the aforeſaid Services: [75]For in-

deed they were not of ſufficient value to be a Portion ſuitable to the Eſtate of a very mean Gentleman.

I Have at preſent done with this Diſcourſe, concerning the aforeſaid *Amicia*, but being deſirous to rectifie all Miſtakes which do concern my Family, in all the Particulars that I can, I think it not inconvenient to inform the Reader of one of yours, in the 334 *Page* of your Book, wherein, ſpeaking of *Margery* the Wife of *Randle Mainwaring*, you ſay,

This Randle Manwaring of Over Peover, ſtiled commonly Honkyn Manwaring in the Language of thoſe times, died 35 *H.* 6. 1456. *Lib. B. page* 21. *E. Buried at Over Peover in the Stone Chappel on the South-ſide of the Church: Which Chappel Margery his Wife ſurviveing, erected, with the two Monuments therein for her ſelf and husband, Anno Dom.* 1456.

For albeit it be very true, that the ſaid *Randle Mainwaring* did marry *Margery*, the Daughter of *Hugh Venables*, Baron of *Kinderton*, and Widow of *Richard Bulkeley* of *Chedle* in *Cheſhire*, yet [76]the ſaid *Margery* did not ſurvive the ſaid *Randle*, and after his death, Erect the ſaid Chappel and Monuments therein: For although on the Eighth day of *Auguſt*, in the Year of Our Lord God, One thouſand ſix hundred and forty, the Pictures of the ſaid *Randle Mainwaring* and *Margery* were tricked out by a very good hand, as they were then remaining in a Glass Window of the ſaid Chappel, Kneeling, with this Inſcription, *viz.* [Page 76.]

Orate pro animabus Ranulphi Maynwaryng & Margeriæ Uxoris ejus qui iſtam Capellam, Anno Dom. Mcccclvj...

And although the Year when the ſaid Chappel was built, is ſtill to be ſeen in the ſaid Window, yet that doth not prove, that the ſaid *Margery* ſurvived her Husband *Randle*, and erected the ſaid Chappel and Monuments: For, the word *qui* cannot poſſibly relate to *Margery* alone, but doth, as I conceive (in the true

meaning thereof) relate onely to the ſaid *Randle:* For it appears by an Inquiſition taken after the Death of the ſaid *Margery*, that
[Page 77.] the ſaid *Margery* [77] held in Dower, at the time of her Death *(Ex dotatione Richardi Bulkeley quondam viri ſui)* the third part of the Moity of the Mannor of *Chedle;* as alſo Five Meſſuages in *Middlewich;* One Meſſuage and Sixty Acres of Land and Wood in *Newton* near *Middlewich;* Ten Acres of Land in *Aſhley* and *Hale;* Eight Acres of Land in *Occleſton;* Six Meſſuages and Two hundred Acres of Land, Meadow, and Wood, in *Whatcroft;* Six Meſſuages and One hundred and twenty Acres of Land, Meadow, and Wood, in *Holme juxta Davenport;* the Moity of the Scite of one Water-Mill, and Four Acres of Wood in *Little Stanthorne*, and the Moity of the Mannor of *Timperley:* And it is alſo found by the ſaid Inquiſition, that *William de Bulkeley* was the next Heir of the ſaid *Margery.*

Now this Inquiſition being taken in the Twenty ſeventh year of King *Henry* the Sixth: and the ſaid *Randle Mainwaring*, together with his Three Sons, Sir *John*, *William*, and *Randle*, (for the ſaid *John* was Knighted in the life time of his Father) being all Three mentioned, as then living, in a Deed of mine,
[Page 78.] dated the Saturday next after the Feaſt [78] of Saint *Hillary*, in the Thirtieth year of King *Henry* the Sixth; and I having alſo in my cuſtody another Deed, dated the Sunday next before the Feaſt of *Corpus Chriſti*, in the ſaid Thirtieth year of the ſaid King, made betwixt the ſaid *Randle Mainwaring* the Elder, and Sir *John Mainwaring* Knight, his Son, on the one party, and *John* of *Aſhley* of the other party, concerning a Marriage to be had betwixt *Hamnet*, Son and Heir Apparent of the ſaid *John Aſhley*, and *Margaret* Daughter of the ſaid Sir *John Mainwaring* (which Deed is alſo mentioned by you *Page* 334.) It is from hence very clear, that the ſaid *Margery* did not ſurvive her Husband *Randle Mainwaring*, and erect the ſaid Chappel and Monuments therein, after the ſaid *Randles* death.

There is alſo omitted by you, in your *Hiſtorical Antiquities*, *Agnes* the Daughter of *John Mainwaring* of *Over Peover* Eſquire,

who was Siſter to Sir *John Mainwaring*, and Wife of Sir *Robert Nedham* Knight: And of this Match, there is very good Proof, (which you have been informed of) I having by me the Pictures of the ſaid Sir *Robert* and [79]Dame *Agnes*, as they were carefully tricked out the Tenth day of *Auguſt*, in the year of our Lord, One thouſand ſix hundred and forty, from a Glaſs Window in *Holmes* Chappel in *Cheſhire*, where they were then Kneeling, with the Coats of Arms of *Nedham* and *Mainwaring* empaled betwixt them, and Three Sons Kneeling behind the ſaid Sir *Robert*, and Two Daughters Kneeling behind the ſaid Dame *Agnes*, together with this Inſcription. [Page 79.]

> *Orate pro bono Statu Roberti Nedam Militis & Agnetis Uxoris ejus & pro animabus Thomæ, Johannis, & Roberti filiorum & pro bono ſtatu Matildæ & Johannæ filiarum ejus Roberti fieri in Anno Domini* Mccccxliiij.

Alſo, in the Chancel of the Pariſh Church of *Adderley*, in the County of *Salop*, being the uſual Burial place of the *Nedhams* of *Shenton*, in the ſaid County, (which Family of *Nedham*, is now honored with the Title of Viſcount *Kilmorey* of the Kingdom of *Ireland*) there do yet remain the Monuments of the ſaid Sir *Robert* and Dame *Agnes*, [80]there being on a Blewiſh Marble Stone, the Pictures of the ſaid Sir *Robert Nedham*, and Dame *Agnes*, and Seven Sons, and Two Daughters; as alſo an Inſcription (all of them of Braſs) which Inſcription is as followeth. [Page 80.]

HEre lieth Buried under this Stone the Bodes of Syr Robart Nedeham Knight, and Dame Agnes his Wyffe, Daughter of John Maynwaring of Pever Eſquyer, which ſayd Robart deceaſſed the iiii daye of June, An. Domini 1556. And the ſaid Agnes deceaſſed the ii daye of Maye. Anno Domini 1560.

FINIS.

AN

ANSWER

To the BOOK of

Sir *THOMAS MANWARING*

Of *Pever* in *Cheſhire* Baronet,

ENTITULED

A Defence of *AMICIA*

Daughter of *HUGH CYVELIOK*

Earl of *Cheſter.*

Wherein is Vindicated and Proved, that the Grounds declared in my former BOOK, Concerning the Illegitimacy of *AMICIA*, are not Evinced by any ſolid Anſwer or Reaſon to the contrary.

By Sir *PETER LEYCESTER*

Baronet.

Anno Dom. 1673.

[1]TO [Page 1.]

Sir *Thomas Manwaringe*

Baronet.

SIR,

YOU are pleaſed to tell me in the Front of the Epiſtle before your Book, *That it will appear ſtrange to thoſe that know the nearneſs of Blood betwixt us, that you ſhould appear in Print againſt me.*

Truly I believe it is only the Zeal of your Opinion, touching the Legitimacy of *Amicia*, which perhaps hath taken but too deep a root within you, that makes you now endeavour to incline the World to [2]be of your Opinion; and that the grounds [Page 2.] alleadged in my Book (ſwaying my Reaſon to the Contrary Opinion) are no juſt grounds to ſupport it: But though we differ in Opinion, yet we may be loving Friends: for I hope we are *Pii Adverſarii*, both Contending for the Truth rather then Victory; And therefore wiſh that we may be firmly united, as well in the bond of Friendſhip as Nature; and that as much as ever, without any Animoſity at all.

And you tell me further, *That if I would have been contented to have delivered what I did conceive concerning* Amicia, *as an uncertainty only* (*as I have done that of* Roger, *Son of the ſaid*

Earl Hugh) *I know you would have reſted ſatisfied, without giving me or the Reader the trouble of any one of your Lines.*

To this I ſay, I remember well you moved me to have put [Page 3.] *Amicia* under the head or notion of the [3]doubtfull Iſſue of Earl *Hugh;* at which time I told you, I muſt either put her under the Title of Lawful Iſſue, or Unlawful Iſſue; for there was no *Medium:* She muſt certainly be either Lawful, or Unlawful, if any Daughter at all: And I thought it not fit to put down in my Book any third Title of Doubtful Iſſue: But till now, I never underſtood you would be content with the words which I put down concerning *Roger* Son of the ſaid Earl; for elſe (if I know my own mind) I ſhould certainly have gratified your deſire therein. For in the next Page of my Book, I ſay, I ſhall then add the Reaſons why I conceive her to be a Baſtard; which is the very Expreſſion that I uſed to the reſt.

There are yet two or three things in your Epiſtle, which in the firſt place I deſire to obſerve unto you.

The firſt is, *That you ſay, you very much wonder when I mention* [Page 4.] Raufe [4]Manwaringe *Chief* (*a*) *Juſtice of* Cheſter, *and his Son* Roger, *and* William Manwaringe *younger Son of the ſaid* Roger, *that I take not notice that they were all three Knights; becauſe I had ſeen Proofs thereof by many Deeds, where the word* Dominus *is prefixed to each of their Names; which was not (that you know of) uſed to be done to any in thoſe elder Ages, but thoſe that were Knights, Clergy men only excepted.*

(*a*) I apprehend not why you call him chief Juſtice of *Cheſter*, when in thoſe Ages there was onely one Judge of *Cheſter* at a time.

But I am very confident, that it was applied alſo to the better ſort of Gentlemen in thoſe Ages, who were no Knights; nor is it a ſure Rule to be always underſtood of a Knight, unleſs the word *Miles* do follow; and in thoſe elder Ages it was ſometimes prefixed, and oftener omitted, even to the ſame men; as *Domino*

Galfrido de Dutton, who in the Original Chart of *Nether-Tabley* writes himſelf onely — *Ego Galfridus de Dutton dedi, &c.* and ſeveral other Deeds I have ſeen of the ſame [5]Perſon (who was [Page 5.] lineal Anceſtor to *Warburton* of *Arley*) wherein I dare affirm among the Witneſſes ſubſcribed, he hath five times and more the word *Dominus* omitted, for once that we find it prefixed to his Name; and am very confident was not in him, as many others alſo, to be conſtrued any more then Maſter *Geffrey Dutton*, and that he was no Knight; for when the Party makes a Deed, he will uſually uſe what Title he hath, eſpecially if he be a Knight (for Eſquires in thoſe Ages were none, which came not to be added in old Deeds till after the Statute of Additions under *Henry* the fifth, although it was firſt made a diſtinct Title under *Richard* the ſecond) he will be loath to looſe that Title: whereas Subſcription of Witneſſes, which are put by the Writer of the Deed, many times have ſome diſtinction of the better ſort of Gentlemen from the reſt by the word *Domino;* which word is never uſed in old Deeds by the Party himſelf, but where it is joyned with another [6]word, as *Ego Willielmus Manwaringe* [Page 6.] *Dominus de Peever;* ſo alſo in your Book, *p.* 70. where it is ſo uſed — *Ego Robertus Dominus Moaldiæ;* for *ipſa vox (Dominus) primo de Imperatore, poſtea de Rege, demum de quovis Territorii Domino enunciata fuit: Spelmanni Gloſſarium, p.* 182. *b.* And in Subſcriptions it is very uncertain; ſometimes added, and ſometimes not added: And ſo are the placing of the Witneſſes in thoſe Subſcriptions of elder Ages very uncertain alſo; for we may obſerve that the ſame men, being Witneſſes to ſeveral Deeds, are many times one put before the other in one Deed, and the ſame put after the other in another Deed: As to the word *Dominus*, if you pleaſe to look back on thoſe your Anceſtors mentioned in thoſe Deeds put down in your Book, as *p.* 27. *Radulfus de Meidnilwaringe Omnibus, &c.* you have here no Title uſed, and yet this was after *Bertrey* his Daughter was marriageable; but you will ſay, poſſibly that was before he was Juſtice of *Cheſter*, ſee then *p.* 70. [7]*Teſtibus Radulfo de Menilwarin. tunc Juſticiario* [Page 7.]

Ceſtriæ, &c. without any *Domino* prefixed; and very many others I have ſeen alſo, where he is ſo Subſcribed; look but into your own Deeds diligently, and tell me if you find not many more Subſcriptions mentioning *Roger Manwaringe*, and *William Manwaringe*, without the word *Domino* then with it; and not any Writing thus, either *Ego Rogerus*, or *Ego Willielmus Manwaringe Miles;* ſee alſo *p.* 69. where moſt of the Witneſſes are put with *Domino* prefixed; and *p.* 70. the next Deed following, *Raufe Manwaringe* then Juſtice, *Hamon Maſcy*, *Guarin Vernon*, and *William Venables* (who are all Witneſſes to the other Deed) are in this put down without *Domino* prefixed; nor is there any one in this Deed, which hath *Domino* prefixed: So that it is plain it was ſometimes added by the Clearks, and ſometimes not added at pleaſure: and alſo uſed to the better ſort of Gentlemen who were no Knights, as well as to Knights and Clergymen: And at
[Page 8.] this day, as the [8]word [Sir] is in common Diſcourſe applicable to Perſons of Quality from the higheſt to the loweſt in it's larger notion, ſo *Dominus* is applicable to any Knight or Gentleman; as if I ſhould ſay, *Domine, quæſo, num hoc verum eſt quod dico, necne?* but in this thing here ſpoken of, I remember you did mention it to me; and I fully intended to have called them all Knights, but I know not by what Fate it was forgotten; whether by my intentneſs on more weighty things to amend them before my Book went to the Preſs, or my Book having been now above a year and a half out of my hands ſince I ſent it away from me, it ſeems I loſt the opportunity and forgot it; and I had rather give to any, eſpecially to your family, more then is due, then leſs; howbeit it is not poſſible for me to place my words ſo in every particular, as can give all men content.

Again you tell me, *That you might take notice of my miſtake in*
[Page 9.] *my Book*, p. 336. *where I blame the Herald who* [9]*in Queen* Elizabeth's *time made for the then Sir* Randle Manwaring's *Coat, Barry of twelve Peeces Argent and Gules; for which I cited* Guillim's *Heraldry; but that was the miſtake of* Guillim, *not the Herald;*

for that which the Herald did then allow (which I Blazoned amiſs) was Argent, ſix Barrulets Gules —— And the Manwarings *of* Pever *(now next heir Male to* Manwaringe *of* Warmincham*) have a good right to the ſix* Barrulets *with which Sir* Roger Manwaringe *did Seal, as well as they have to the two Barres which Sir* Thomas Manwaringe *of* Warmincham *did bear.*

But here is the Herald's errour, that it ſhould be given by him to *Manwaringe* of *Pever* now in theſe late Ages as his moſt proper Coat; whereas ever ſince the time of the ſaid Sir *Roger Manwaringe*, as well the Heirs of the right Line, as alſo the *Manwarings* of *Pever* (after they became next Heir-Male) have conſtantly born the two Barres for ſome [10]hundreds of years [Page 10.] without alteration ſucceſſively, and not the ſix Barrulets at all till this Change of the Herald in Queen *Elizabeth's* time: why now, though the Poſterity of Sir *Roger* might have continued the right of ſix Barrulets, yet they changed the ſame to two Barres which after ſo many Ages hath now gained an Hereditary right; for at firſt Coats were aſſumed at Pleaſure; but from *Henry* the Third's time downward Arms began to be made Hereditary; and moſt Gentlemen from that time downwards did bear the Coat of their Anceſtors, as it were hereditarily; and here is the Abſurdity, that the Herald alters the Coat again to ſix Barrulets, after ſo many Ages paſt, when the two Barres had been ſo long retained as an Hereditary right; for let any man but imagine what confuſion Changes would make, in caſe every Son ſhould vary from his Father by bearing a diſtinct Coat, and ſtick to no certainty: wherefore it ſeems abſurd, and I know not whether it may deſtroy a right already [11]gained in this Caſe; [Page 11.] for it is uſage onely that makes a right herein, as you may ſee in the great Suit between *Scroop* and *Groſvenour*, in the Marſhall's Court under *Richard* the Second, concerning the bearing of a Coat of Armes, whereto both challenged a right and Property by Uſage, but no other way.

And thirdly you tell me, *That you ſuſpect I have branded ſeveral Perſons in my Book with Baſtardy, without direct Proof thereof; and although you concern not your ſelf for any, but ſome of thoſe by me mentioned, when I write of the baſe Iſſue of* Hugh Cyveliok; *yet if you make it appear that I have there without any certainty aſperſed two other Ladies beſides* Amicia, *you hope I ſhall have no juſt Cauſe to blame you.*

Truly I ſhall not, For thoſe you hint upon, but name not, I can make no anſwer to take off your ſuſpicion, till I know who
[Page 12.] they be; but the other two Ladies beſides *Ami-*[12]*cia*, I conceive you mean *Geva* Daughter of *Hugh Lupus*, and the Wife of *Bacun* Daughter of *Hugh Cyveliok;* which two you bring in upon the account of *Amicia:* for thoſe being proved Baſtards, will be a great blow to *Amicia;* and had not the Caſe of *Amicia* been concerned, I believe theſe two had never been ſpoken of by you, nor ſuſpected nor doubted of: But if I do make good what I have Alledged, I hope then you will recant for branding me with an Aſperſion; which I think I ſhall do, with as much certainty as the nature of the thing and times will admit.

So much touching your Epiſtle: and now I proceed to the reſt of your Book.

[Page 13.] [13]*Page* 21, 22.

WHere in the firſt place you wonder, *That I ſhould ſo peremptorily call* Amice *a baſe Daughter of* Hugh Cyveliok, *unleſs I had more ſure grounds to go upon; and though it be your Taske onely to defend* Amicia, *yet you ſuppoſe you ſhall make it appear before you have done, that I go on no abſolute certainty, in calling* Bacun's *Wife, Mother of* Richard Bacun *Founder of* Rouceſter-Priory, *another baſe Daughter of* Hugh Cyveliok, *or in calling* Geva *a baſe Daughter of* Hugh Lupus: *and then you*

would remind me of what I have been formerly told, that thoſe Heralds that gave Manwaringe *of* Pever *the Quartering of the Earl of* Cheſter's *Coat in Queen* Elizabeth's *time, were Mr.* Cambden, *and Mr.* Erdeſwick, *Perſons that you do not know why I ſhould ſo much miſlike their boldneſs and ignorance (as I call it) for their ſo doing.*

[14]Whereunto I ſay, My grounds are certain enough to prove them all three Baſtards, and ſuch as yet is not refelled by you, by any ſubſtantial Anſwer to the contrary, and I believe in the Looſe it will ſo appear; as to the Heralds you mention, you ſay you would remind me that you had formerly told me of them; but you never told me till long time after that part of my Book was written; what then? Mr. *Cambden* I hold a moſt Learned man, and one of the beſt Antiquaries of our Nation in this laſt Age; but yet for doing this thing, whether *Cambden* himſelf, or who ever elſe, I ſay he was overbold in it, and it is erroneous; for though in the Age of *Henry* the Second Quartering of Coats was not in uſe, yet about the Reign of *Henry* the Fourth, every Gentleman began to Quarter the Coat of the chief Heir with whom his Progenitor had matched; and after *Edward* the Fourth's time, marſhalling of many Coats together came into uſe, and this was to ſhew their right; ſo ſaith *Camb-*[15]*den* himſelf in his Remains, *p.* 225. of the Edition thereof put out by *Philpot.* Now between the Age of *Henry* the Fourth and Queen *Elizabeth* had elapſed above 150. years, time enough to have taken notice of ſuch a Quartering, if it had been right and due; but you ingeniouſly confeſs in the place cited, that perhaps in ſtrictneſs it may be true, that it doth only belong to thoſe of the Whole-blood to Quarter Coats, and that to ſhew their rights; yet it being now a common practice for thoſe of the Half blood to do it, you know not why it ſhould be accounted a crime in your Family more then in others in the like Caſe: True, it is as lawful in your Caſe as any other, if your Caſe be the ſame with others: I ſay, the Quartering of the Coat of a Coheir ought not

[Page 14.] [Page 15.]

to be given by any Herald to any, but the Coheir of the Whole-blood; which in ſtrictneſs, you do confeſs: Is not that Herald then to be miſliked, both for his boldneſs and errour, who ſhall
[Page 16.] at any time give it to the Half-blood? but in this Caſe [16]I believe it will not appear to be given to the Half-blood, as you call it; unleſs it be meant of a Half-blood illegitimate.

Page 23.

You ſay, *Becauſe* Manwaringe *was not an equal Competitor to the Coheir of the Earl of* Cheſter, *could be no ſubſtantial Argument to prove* Amicia *Illegitimate; and ſo you paſs to illuſtrate your Anceſtour to have been ſeized of a good Eſtate of Lands.*

Whereunto I ſay, I do not urge that for an Argument of her Illegitimacy, we ſhall come to that anon. I only there obſerved chiefly, that ſhe was no Coheir, which you grant; and therefore the Herald ought not to have given to *Manwaringe* the Quartering of the Earl of *Cheſter's* Coat at all; which you do grant to be in ſtrictneſs true, and which I have touched immediately before; and I ſhall likewiſe grant your Family to be a Family
[Page 17.] of good Quality, both [17]at that time, and at this preſent alſo; I ſhould be loth to ſay to the contrary: but as to your note of Dukes and Earls to have been anciently Judges of *Cheſter*, you ſhould have diſtinguiſhed of the times; for that was not till the Reign of *Richard* the Second (who made Deputies to act in their ſtead) before which time you find no ſuch great Perſons Judges there; nor from *Henry* the Seaventh's time downwards.

Thirdly, *Page* 24.

You ſay, *The caſe was not the ſame with the other Daughters of the Earl of* Cheſter, *when* Rafe Manwaringe *married* Amicia, *as it was afterward; for* Amicia *was married in the life time of her Father Earl* Hugh; *whereas thoſe four came to be ſuch great for-*

tunes upon the death of their Brother Randle *Earl of* Cheſter *and* Lincolne *without Iſſue, to whom they then became Heirs, they being his Siſters of the Whole-blood; and though all or moſt of them were married before they* [18]*became to be his Heirs, yet the ſaid Earl* [Page 18.] Randle *having never had Iſſue, the expectation of that Eſtate added to their other Fortunes, muſt needs make them very conſiderable Fortunes; whereas* Amicia *was but of the Half-blood, being a Daughter of Earl* Hugh *by a former Wife.*

My Anſwer.

Herein firſt you beg the Queſtion, which was never granted, nor can ever be proved, That *Amicia* was of the Half-legitimate Blood to Earl *Randle* by a former Wife of Earl *Hugh:* but *dato hoc, ſed non conceſſo:* It is more rational to imagine, that Earl *Hugh* matching his only Daughter by a former Wife (as you ſuppoſe) in his life-time, would have married her to as conſiderable a Perſon, as was either provided by himſelf, or his Son, for his younger Children by a ſecond venter, whoſe expectation (which you conceive added to their Fortunes, whereby they matched to ſo great Perſons) could [19]not be much, being [Page 19.] grounded upon great uncertainties, ſince it could not be foreſeen (when they married) that their Brother ſhould dye without Iſſue, who afterwards married two Wives ſucceſſively, purpoſely to have Iſſue of his own Body to inherit his own Lands.

Page 25.

You ſay, *That I acknowledge I have been informed that three eminent Judges, and four Heralds, are of Opinion that* Amice *was Legitimate; and was alſo told lately by one, whom you hope I have no reaſon to diſcredit, that ſince then ſeveral other Judges and Heralds have been conſulted; all which did concur in the ſame Opinion, that* Amicia *was no Baſtard.*

My Anſwer.

Whereunto I anſwer and confeſs, I was ſo informed; but it was you your ſelf who informed me; nor did I ever yet ſee any
[Page 20.] Opinion under [20]their hands, nor their grounds and reaſons for ſuch their Opinions atteſted: what can be made of this? Let the ingenious Reader judge of the Argument: ſome Judges and Heralds are of that Opinion, *Ergo* ſhe was Legitimate. In theſe Cafes all that can be ſaid *Pro* and *Con* ſhould have been put indifferently on both ſides, when any grave Perſon is to be conſulted; which hitherto hath been done privately on the one ſide onely, without hearing the Reaſons on the other ſide; and you know how Opinions are not rarely given according to the putting of the Caſe, but very frequent and uſual; when many times even the Lawyers themſelves differ in their Opinions: But I can compare this to be like nothing more then going about to get hands to a Petition or Certificate. It is not Opinions that ought to ſway the Judgment of all indifferent Readers, but ſolid Reaſon. And I ſhall deſire to be Confuted with ſubſtantial Arguments, not Opinions of this or that man.

[Page 21.] [21]And now I come to your Reply againſt my Anſwers given to the Arguments for *Amicia*, which I ſhall fully comprehend in ſhort, that the Reader may with leſs trouble better apprehend the Point.

Page 30, 31.

Where you ſay, *That my Anſwer is, that it is true, the Law is ſo taken at this day;* i.e. *that Lands cannot paſs* in libero maritagio *with a Baſtard: but I doubt whether it was ſo taken in the elder Ages of* Henry *the Second, and upwards: and alſo that I cite* Glanvil *Chief Juſtice of* England, *who lived in the time when* Amicia *lived: and that I do alſo ſhew you a Precedent, where Lands were given by the Father in free Marriage with his baſe*

Daughter: and I ſay further, that the Common Law in ſundry other things is at this day altered from what it was in former Ages, long after the time of Henry *the Second; for which I cite* [22]Cooke *upon* Littleton *in ſeveral places:* Theſe are my words. [Page 22.]

Your Reply, *Pag.* 30, 31.

Hereunto you reply to what I urge out of the Lord *Cooke; That you conceive the Common Law, where not altered by Parliament, is the ſame at this day that it was formerly: and you cite* Cooke *upon* Littleton, *p.* 115. b. *(which ſhould have been* fol. 115. b.*)* who ſaith, *It is a Maxime of the Law, That whatſoever was at the Common Law, and is not ouſted or taken away by any Statute, remaineth ſtill; and ſo conſequently you argue, that if it ever were the Common Law, that Lands or Services might paſs* in libero maritagio *with a Baſtard, or one that is not of the Bloud, it would be lawful to do ſo ſtill; becauſe that part of the Law is not ouſted or taken away by any Statute: — So that the places which I have cited, do not prove, That the Common Law at this day doth vary from what it was in former Ages in any particular; but only that it was taken to* [23]*be otherwiſe in thoſe dayes: juſt like* [Page 23.] *ſome Caſes in our Reports, which at ſeveral times have been adjudged directly contrary to each other; but notwithſtanding the Law was ſtill the ſame.*

My Anſwer.

To this I Anſwer; Firſt, To the Maxime of Law, wherein it is ſaid, *that whatſoever is not ouſted or taken away by any Statute, remaineth ſtill;* wherein the word *Ouſted* muſt needs be underſtood disjunctively, or conjunctively: if disjunctively, then the words *(not ouſted)* muſt be underſtood of ſome other way than by Statute; and then it is as much as to ſay, *not altered:* and ſo implies a common practice of the Law, in ſuch caſes, contrary to what it was formerly. If it be underſtood conjunc-

tively, then the words muſt needs bear this ſence; that the Law is the ſame ſtill in all points as it was before, except where taken away by Statute: And thus underſtood, I ſhall produce you
[Page 24.] *Cooke* againſt *Cooke*, in his Book [24]upon *Littleton*, fol. 34. §. 39. His words are theſe — *In ancient time it appeareth by* Glanvil, *l.* 6. *c.* 1. *it was taken* (that is, the Law was taken) *that a man could not have endowed his wife* ad oſtium Eccleſiæ *of more than a third part; but of leſs he might: but at this day the Law is taken as* Littleton *there holdeth; which is, that a man may endow his wife* ad oſtium Eccleſiæ *of his whole Land, or of the half, or other leſs part.* So that here we ſee the Law in this caſe is altered, and without any Statute; *ergo* the Law is altered without any Statute. Alſo *Ibid.* fol. 8. a. towards the bottom, — *Of ancient time the Heir was permitted to have an Action of Debt upon a Bond made to his Anceſtor and his Heirs; but the Law is not ſo at this day:* But herein was no Statute made to take it off; *ergo*, the Law in that caſe is altered without any Statute: And ſo in many other Particulars, which might be here cited; wherefore methinks it is the better expoſition of that Maxime,
[Page 25.] that the words be underſtood disjunctively; and ſo [25]it thwarts not with that which the Lord *Cooke* ſaith in theſe other places: and the word *(or)* is meerly a disjunctive.

Your Second Reply, p. 31, 32.

But you go on and ſay, *you would come as near me as you can; and you acknowledge, that though the Common Law was ever the ſame, where not altered by Parliament; yet in former ages they did in ſome Particulars take the Law to be otherwiſe than they now do: and if I could prove that they did ſo in caſe of free-marriage, it would take off your Argument; becauſe the ancient Deeds and Grants are to be expounded as the Law was taken to be at the time of the Grant; as* Cooke *upon* Littleton *ſaith*, fol. 8. b. *For ſay you, that if it had been taken in former ages, that Lands might have been given in free-marriage with a Baſtard, or one not of the*

bloud, it would have certainly been obſerved by ſome of the Sages of the Law.

My Anſwer to your Second Reply.

[Page 26.]

I pray you, if in former Ages the Law was taken otherwiſe in ſome particulars, than at this day it is taken: which hath now joyned (to ſtrengthen it) the common practiſe of the Nation (which I take to be the Common Law at this day) for many Ages together, without any contradiction; what rational man can deny, but the Law in ſuch particulars is clearly altered? For in thoſe Caſes (I ſpeak not of any altered by Act of Parliament) I would ask you whether the Law be now altered or no? If it be altered, then you are in an errour, to ſay the Law remains the ſame; and if it be not altered, then the former Law is ſtill our common Law, and not the Common Law as at this day it is taken; which is uſed otherwiſe at this day than formerly: Then our Common Law in the particular caſes mentioned, and at this day uſed otherwiſe than formerly, is no Common Law of *Eng-*
land; becauſe (ſay you) the Common Law cannot be altered [Page 27.]
without an Act of Parliament, but remaineth ſtill the ſame; and ſo the Judges of *England* in all theſe caſes, at this day do not judge aright according to our Common Law: I pray you, ſee what abſurdities follow hereupon: And as to proving of Lands to have paſſed in free-marriage with a Baſtard in the Age of *Amicia,* I have already given you a Precedent for it; and the Lands did paſs accordingly: and ſhall make it good (when I come unto it in its proper place) that *Geva* was certainly a Baſtard, by as good proof as poſſibly can be expected in ſuch a Caſe: But more of this, when I come to *Geva.*

Your third reply, pag. 33.

In the next place, you have a long Harangue from *p.* 33, to *p.* 41. wherein you endeavour to reſtrain the words of *Glanvil,*

which are theſe, — *Quilibet liber homo quandam partem terræ*
[Page 28.] *ſuæ cum filia ſua, vel cum* [28]*aliqua alia qualibet muliere, dare poteſt in maritagium:* and firſt, you begin to prove it by Scripture, *Deut.* 14. where a Liberty was given to the *Jews* to eat whatſoever their ſoul deſired; and yet this muſt be underſtood of ſuch meats as were legally clean and allowed them by the Law.

My Anſwer to your third Reply.

I have ſeldom known, nor I believe any other, any ſuch Queſtion as this, whether *Hugh Cyveliok* had a former wife, to be proved by Arguments of Scripture, or Nicety of Law; which is meerly a Queſtion of Hiſtory: For the Text urged by you, *Deut.* 14. 26. I find no ſuch general Latitude, which needs any Expoſition as you mention: The words are, — *Thou ſhalt beſtow that money for whatſoever thy ſoul luſteth after, for Oxen, or for Sheep, or for Wine, or for ſtrong drink, or for whatſoever thy Soul deſireth.* The Text is clearly reſtringent to thoſe things
[Page 29.] here mentioned, which they were allowed to [29]eat and drink according to their Law. What is this to the point in hand? *ergo Glanvil*'s words, *Cum aliqua alia qualibet muliere*, muſt be underſtood to be agreeable to the Law of the Land where he lived; that is, (as you would have it) to any except a Baſtard, or a Woman not of the Donors bloud: But how doth that appear to be the Law in *Glanvil*'s time or upwards? *He was the firſt who reduced our Law into writing: Omnium primus ἔγγραφον reddere aggreſſus eſt*, ſaith *Spelm.* in his Gloſſ. *p.* 333. And it is eaſie to obſerve how lame and imperfect our Law was in thoſe times, towards what it was in *Littleton*'s time; and eſpecially compared with theſe laſt ages: But in ſhort, your Expoſitions all along to *pag.* 41. by *Bracton*, or *Fleta*, or others, or making *Glanvil* to fight with himſelf, unleſs *Glanvil*'s words be interpreted as you would have them, I leave to wiſe men to judge, who will take pains to ſcan them, whether they be perti-

nent. For that wherein you ſay *Glanvil* contradicts himſelf, becauſe [30]he ſaith, *that none can give Lands* in remunerationem Servitii ſui *to hold good after the death of the Donour;* what is this to the point, why a man cannot give his Lands to any *in libero maritagio?* or that it was not uſual in thoſe dayes to paſs Lands in free marriage with a Baſtard, calling her only his Daughter, without the addition of Baſtard, and thereby owning her to be of his bloud and kindred? The ſum is this; The Lawyers of latter ages do expound the Law, That Lands cannot paſs in free marriage with Baſtards; *ergo* it was ſo taken in *Glanvil*'s time, and his words muſt be ſo underſtood, though he ſay no ſuch thing: This is a great *Non ſequitur.* And yet our Lawyers ſay now, Baſtards are capable of receiving Lands after they have gained a Name by reputation; which *Amicia* had gained; as we ſee in the Deed, where ſhe is called and owned by the Earl for his Daughter: But you tell me in the Cloſe, *pag.* 41. That the Common Law hath alwaies been the ſame, becauſe *Cooke* on *Lit-*[31]*tleton* ſaith, That *the Common Law hath no Controller but an Act of Parliament:* which I have told you, muſt be underſtood, whilſt it remains the Common Law; which yet may alter, and hath altered, in ſundry Particulars, without any Act of Parliament; as I have before proved. [Page 30.] [Page 31.]

But here I muſt turn you back to *p.* 23, *&* 24. where this hath been ſufficiently anſwered before.

Pag. 42. *Your Fourth Reply.*

You ſay, *There is not any weight in what I ſay,* viz. That it ſeems to me in thoſe elder ages Baſtards were reputed of the Bloud, by the frequent Appellation of them by the names of Unkle, Brother, Daughter, Coſin, *&c.* for by the ſame reaſon I ſhould repute them of the bloud now, this Age being as Civil to them in their expreſſions, as any Age could poſſibly be.

[Page 32.] [32]*My Anſwer.*

But where do you find almoſt in any Deeds of theſe laſt Ages, where ſuch are not now called Baſtard-ſons, Baſtard-daughters, Baſtard-brothers, *&c.* in all Settlements and Conveyances of Annuities or Portions; which in the very ancient Ages was never uſed: Nay, what ſay you, if I affirm they be of the Bloud both now and in former Ages? though the Law will not now allow them ſo, becauſe they now are eſteemed in the eye of the Law *quaſi nullius filius;* for if A. have a Baſtard ſon or daughter, which is really his; they muſt needs be of his bloud: For no Law can extinguiſh Nature; though by the Common Law they are not now eſteemed ſo. And what if I ſay, that the reaſon why in the Deeds of thoſe elder Ages they were called Daughters without any addition of Baſtard, whereby the Party owned them to be of their Kindred and Bloud, was, that the
[Page 33.] Inheritance of the Lands [33]paſſed in *libero Maritagio* with ſuch, might deſcend to their heirs? For our Lawyers now tell us, that Baſtards are capable of receiving Lands after they have gained a Name by Reputation; why may not then Baſtards, having gained the Names of Daughters, receive a Grant from their owned Fathers, either in Frank-marriage, or otherwiſe.

And now you come to *Geva*, and my Precedent.

Pag. 43.

For the Precedent I have given, wherein (I ſay) Lands were given *in libero maritagio*, you conceive it will not hold; 1. *Becauſe it doth not certainly appear that* Geva *was a Baſtard; for in all the Records that I cite, ſhe is called Earl* Hugh's *Daughter; and in one of them, ſhe calls* Randle *Earl of* Cheſter *her Coſin; which makes it probable, that ſhe was legitimate; eſpecially ſince you do*
[Page 34.] *not find by any Deed, Record, or Author whatſoever,* [34]*that ſhe is at any time called a Baſtard.*

My Anſwer to the firſt Reaſon.

Though we find her not called Baſtard in expreſs terms; yet we find it implied in an Author contemporary, by certain and ſure conſequence, which I believe can never be fully anſwered.

Secondly.

Theſe words of Ordericus *p.* 787. — *Richardus pulcherrimus puer, quem ſolum ex* Ermentrude *filia* Hugonis *de Claro monte genuit, conſulatum tenuit,* &c. *by which words you are not ſatisfied, but he might as well mean, that* Richard *was the only Son, as well as the only Child begot on* Ermentrude: *for there is no neceſſity to take the word (ſolum) adverbially: neither is it marked as an Adverb in* Ordericus *his Book; though it be ſo in mine: — And though he tells us,* p. 522. *that E pellicibus plurimam ſobolem utriuſq;* [35]*ſexus genuit; yet he ſaith not that* Geva *was one of them.* [Page 35]

My Anſwer to the Second Reaſon.

But you will not perhaps be ſatisfied of his meaning; for he ſaith not, *Quem ſolum filium,* as you interpret him; but indefinitely, *Quem ſolum ex* Ermentrude *genuit:* So that, whether *ſolum* be underſtood adverbially (which certainly to moſt men will here ſeem more proper) or whether you take it for a Noun, you can make no more of it in Engliſh than thus, *Richard* a beautiful youth, whom only Earl *Hugh* begot on *Ermentrude,* &c. For whether we Engliſh it, whom only he begot; or whom he only begot, it retains the ſame ſenſe; for if any other perſon, either Son or Daughter, were begotten on *Ermentrude* by Earl *Hugh,* then could it not be ſaid that *Richard* was only begot on *Ermentrude;* and can any man now imagine from this teſtimony of *Ordericus,* that Earl *Hugh* had any other Iſſue by *Ermentrude* [36]but only *Richard?* So that if we believe *Ordericus,* who living [Page 36]

in that Age, knew the truth better than we can now, *Geva* was no Daughter by *Ermentrude;* and by certain conſequence muſt be one of the baſe Iſſue mentioned by *Ordericus*, though he names none in particular: and ſhe cannot be by any former Wife (your old Subterfuge) becauſe Earl *Hugh* had never any other Wife; which ought either to be proved by you, or elſe no good reaſon appears to the contrary; and then ſure the Deed proving *Geva* had Lands given in free Marriage, the precedent holds and proves, that Lands in thoſe elder Ages paſſed with Baſtards in free Marriage, whom they owned for their own Children; ὅ περ ἔδει δεῖξαι. *quod erat demonſtrandum.* I add further, that if *Hugh Lupus* had a Daughter by *Ermentrude* (for you your ſelf confeſs and expound the words of *Ordericus* to be, that Earl *Hugh* had no other Son) what advantage is it for your purpoſe, unleſs *Geva* was that Daughter, and ſo ſhe be legi-
[Page 37.] [37]timate? See now, then *Geva* muſt needs be Siſter of the Whole-blood to Earl *Richard*, and by conſequence ſole Heir to her Brother of all the Earldom; as you interpret *Ordericus:* and ſo I leave it to every Readers Judgement; and then by your own Argument, ſhe ſhould have had the Earldom.

Thirdly, *Page* 45.

Then you proceed to my Objection, *That if* Geva *had been Legitimate, her Iſſue ought rather to have ſucceeded into the Earldom of* Cheſter *then* Randle de Meſchines, *after the death of* Richard *Earl of* Cheſter: *That doth not at all follow (ſay you) becauſe it is poſſible the Earldom of* Cheſter *at that time (as moſt times Earldoms anciently were) might be entailed on the Heirs-Males only, and then the Male Line being extinct, why might not the King confer it as well upon* Randle de Meſchines *who was a near kinſman, as on a ſtranger, which later courſe is alſo uſual*
[Page 38.] *at this day;* [38]*and it is very probable, that the Earldom was entailed on the Heirs-Males onely; for* James York *in his union of honour*, p. 105. *ſays, That this* Randle *was made Earl by grant of*

King Henry *the Firſt; and if ſo, it came not to him by Deſcent; and ſo all that I object, you ſay, is fully anſwered. But if it had been ſo, that the Earldom had been to deſcend to the Heirs general; if* Geva *was Daughter of* Hugh Lupus *by another Wife beſides* Ermentrude, *then the Earldom of* Cheſter *would have deſcended from Earl* Richard *to* Randle de Meſchines *by his Mother, being Aunt of the whole blood to* Richard, *and not his Siſter* Geva, *or her Iſſue, they being but of the Half-blood.*

My Anſwer to the third Reaſon.

Let any ingenious Reader obſerve, whether any ſubſtantial Anſwer be here given at all; you ſay it is poſſible that the Earldom was then entailed on the Heirs Males onely; but will you argue upon poſſibilities, to [39]prove a thing *de facto?* but ſuppoſe [Page 39.] it were ſo entailed, why ſhould not the King have conferred it on the Iſſue of *Geva*, before *Randle de Meſchines*, that being the Iſſue of a Siſter, and *Randle* the Iſſue but of an Aunt? or why may you think that the King (though he gave it to *Randle*) did not give the honour and Lands unto him as in whom was the greateſt right to have it? but to this you give no Anſwer at all; but we find not that the Iſſue of *Geva* ever moved for it. The true reaſon being that her Title was not good; but had ſhe been Legitimate, it is more then probable, ſhe would have looked after the obtaining of ſo great an inheritance, yea and obtained it too before *Randle:* Nay, had ſhe been but of the Half-blood (which is your old and onely Subterfuge) ſhe would by all probability have buzled hard for ſo great an Eſtate in thoſe Ages, before ſhe had loſt it; but you are now come to an excellent way of arguing by ifs, and ands, and poſſibilities; by which means Anſwers may be [40]made to any thing even to eternity; [Page 40.] but if you would ſubſtantially prove *Geva* to be of the Half-blood, then muſt you prove *Hugh Lupus* to have another Wife before *Ermentrude*, and *Geva* to be the Daughter of that very Wife; I would fain have you but to prove that ever he

had another Wife by any Hiſtorian, or Record; this would be something; but what you here ſay, is nothing; and then you Inſtance, that the Earldom of *Cheſter* probably was entailed on the Heirs Males onely, becauſe *James York* ſaith, that *Randle Meſchines* was made Earl by the Kings grant; and if ſo (ſay you) it came not to him by deſcent; who muſt grant it him, but the King? what doth hinder, but the King gave it to him as one who by deſcent had moſt right to it, although he was not the direct Heir Male of Earl *Hugh*, but of another Family, yet a near Kinſman by marriage? And therefore muſt now come in by a Grant; yet for all this, no neceſſity, that the Earldom was
[Page 41.] entailed [41]at that time on the Heirs Males onely.

Fourthly, *Page* 46.

And now you come to ſhow me a Precedent (which I deſired) where ever the Heirs of an Aunt inherited before the Heirs of a Siſter, both legally born, &c. *And now you will ſhew me where an honour in ſuch a caſe came to the Heirs of the younger Siſter, and not to the Heirs of the elder Siſter; which is full as much (ſay you) as if it were done in the caſe of a Siſter and an Aunt; and you Inſtance out of* Birds *Treatiſe of Nobility*, p. 96. *in the Caſe of* Rauſe *Lord* Cromwell, *being a Baron by Writ, died without Iſſue leaving two Siſters and Co-heirs:* Elizabeth *the eldeſt Married Sir* Thomas Nevill, Joane *the younger Married Sir* Hunt Bourcher: Bourcher *was called to Parliament as Lord* Cromwell, *and not Sir* Thomas Nevill.

Page 42.] [42]*My Anſwer to the fourth Reaſon.*

Bird indeed alledgeth this Precedent in the place cited; where he tells us before, That the Queſtion or point [that is, whether a Barony by Writ may deſcend to the Heirs Females or no?] is ſomewhat perplexed, by means of difficult Preſidents; and now in this place he ſaith (comming to compound the Controverſy)

that it is obſerved, that ſome Precedents do prove that Baronies by Writs have deſcended unto Heirs Females, whoſe Husbands have been called to Parliament, whether in regard of themſelves, or in regard of their Wifes, it matters not: and ſecondly, out of the Precedents it is to be obſerved, That the King is nevertheleſs at liberty to call to Parliament, whom he ſhall think moſt meet in his Princely Wiſdom, as his Majeſties Progenitors in former Ages have obſerved; and then he brings in the Caſe of the Lord *Cromwell* before mentioned: thirdly, it is ob-[43]ſerved, that if a [Page 43.] Baron by Writ dye without Heir Male, having Daughter, or Siſter, or other (who can challenge the Lands of ſuch Baron deceaſed) the Title of ſuch Heir Female hath been heretofore allowed, *&c.* Now the Caſe comes as near to the Caſe of *Geva*, as an Apple to an Oyſter; for let any rational man be Judge, whether the King by his Prerogative Summoning by his Writ to Parliament the Husband of the younger Siſter and Co-heir, before the Husband of the elder Siſter and Co-heir, both of them ſharing the Lands equally, be any thing to the Point of *Geva*, or to ſatisfie why ſhe ſhould not have had both the Earldom of *Cheſter*, and all the Lands thereof, had ſhe been legitimate, and by conſequence ſole Siſter and Heir to her Brother *Richard* Earl of *Cheſter*. And in this Caſe of the Kings Writ propoſed, yet you ſee the Siſters ſhared the Lands, as by right they ought to do; and ſo I ſhall paſs to your next Reaſon.

[44]Fifthly, *Page* 48. [Page 44.]

But now you come and ask me what I will ſay, if this Deed which I alledge to be made to Geva, *will not at all concern* Amicia; *becauſe* Cook *upon* Littleton, *fol.* 21. *b. (which in your Book you have miſcited alſo by putting the Page for the Folio) tells us, that theſe words* [in liberum maritagium] *are words of Art, and ſo are neceſſarily required: As if a man gave Lands to another with his Daughter* in Connubio ſoluto ab omni Servitio, *yet here paſſeth but an Eſtate for Life: And the words in the Deed to* Geva *are*

not in liberum maritagium, *but* in libero conjugio; *and ſo are but like the words* in Connubio ſoluto ab omni Servitio, *which make but an Eſtate for Life; and ſo might be paſſed to a Baſtard or any other —— and then after you ſay, the Deed to* Geva *is worded as if it intended onely an Eſtate for Life, there being no mention of her Heirs: and ſecondly, it is given to* Geva *alone, and not*
[Page 45.] *unto a Husband* [45] *with her; whereas that given to* Manwaringe *with* Amicia *in free Marriage, mentioneth their Heirs.*

My Anſwer to the fifth Reaſon.

Though the Lord *Cook* ſay, *That by theſe words* in Connubio ſoluto ab omni Servitio, *there paſſeth but an Eſtate for life;* yet he ſaith not, *That by theſe words* in libero conjugio, *paſſeth onely an Eſtate for Life:* nor in Caſe the words had been *in libero Connubio,* he ſaith nothing of them; although you are pleaſed to ſay, *That the words* in libero Conjugio, *are but like the words* in Connubio ſoluto ab omni Servitio, *which make but an Eſtate for Life.* I think, Sir, you and I being no profeſſed Lawyers, had beſt to leave theſe things to the Sages of the Law; and notwithſtanding the Criticiſm, I beg both your Pardon, and my Lord *Coke*'s too if he ſhould have ſaid it (which I do not find that he doth) in this Caſe of *Geva;* for the Lands in the Deed
[Page 46.] mentioned did deſcend to her Heirs by [46] *Baſſet:* and even at this day it is called *Drayton-Baſſet,* in diſtinction of other Towns called also *Drayton;* becauſe the *Baſſets* were anciently Lords thereof; and this very Deed was taken out of a Manuſcript in *Arundel*-houſe, wherein the old Deeds belonging to the *Baſſets* of *Drayton-Baſſet* in *Staffordſhire* were enrolled about the Reign of *Richard* the Second, as you may ſee it mentioned in my Book. Again you ſay, *The Deed to* Geva *is worded as if it intended onely an Eſtate for Life; and is made to* Geva *her ſelf without the words* [*her Heirs*] *mentioned therein;* where you are to take notice, that this Deed of the firſt *Randle* Earl of *Cheſter* is but a Confirmation to his Coſin *Geva* of a former Deed, *Sicuti Comes*

Hughes *ei in libero Conjugio dedit;* which Deed (may be) had the Land paſſed to her and her Heirs, or to her Husband with her and to their Heirs: But for certain, ſhe and her Heirs by *Baſſet* had the ſame Land, however Earl *Hugh*'s Deed did run: I add further to your Ob-[47]jection, that it was intended but for [Page 47.] Life, becauſe given to her onely without the word (Heirs): *Cooke* upon *Littleton, fol.* 21. *b* citeth *Peter Saltmarſh* Caſe, and *Fitz Herbert de Natura Brevium, fol.* 172. that Lands may be given by a Man to his Son in Free-marriage; and why not as well to his Daughter alone in Free-marriage? which words of Frank-marriage do of themſelves create an Eſtate of inheritance, as *Cooke* ſaith on the ſame Page. And now we have done with *Geva;* and I appeal to the indifferent Reader, whether my Reaſons alledged for her Baſtardy in my other Book, be by you in the leaſt taken off by any ſolid Anſwers or Reaſon to the contrary; although in your Book you brand me with an aſperſion of her.

Page 50, 51.

And now you come to the ſecond Reaſon alledged, *To prove that* Amicia *is legitimate; which you ſay hath its full ſtrength yet, and is not at all* [48]*weakened by any thing I have ſaid: For in* [Page 48.] *my computation according to reaſonable ſuppoſitions it cannot be well affirmed, that* Hugh Cyveliok *was above ſeven or eight years, or thereabout, older then his Wife* Bertred: *But by your computation, you ſay poſſibly he may be* 26. *or* 27. *years older: whoſoever will take pains to ſcan both our computations, will ſee which is more moderate and reaſonable: in yours you ſuppoſe* Maud, *Earl* Hugh's *Mother, to be born the ſecond year after her Mothers Marriage; and* Maud *Married in the* 16th *year of her Age, and Earl* Hugh *born in the* 17th *year of* Maud's *Age which falls in* Anno 1129. *and ſo all in the utmoſt poſſibility; and if we may compute by poſſibilities, as you do, I ſay Earl* Hugh *might be but four years older then* Bertred; *but if you will go by ſtrong proba-*

bilities, that Earl Randle *(Father of Earl* Hugh*) was Married by* Robert *Earl of* Gloceſter *unto* Maude *his Daughter, thereby to draw him to the Part of Queen* Maud *his Siſter, about the very*
[Page 49.] *year* 1139. *before which* [49]*time we find no mention in our ancient Hiſtorians of* Randle's *actings againſt King* Stephen; *but in that very year we do, and then by ſome of them ſtiled Son in Law to the Earl of* Gloceſter; *but not before that year, that I remember: I ſay, if we reckon by utmoſt poſſibilities, Earl* Hugh *could not poſſibly be above* 16 *or* 17 *years older then* Bertred; *but rationally we may imagine he was not ſo old by many years: and though our gheſſes may be a little in the dark, yet I think I am about the very time of his Marriage: ſo that if your Argument carry its full ſtrength, it is certainly but a little ſtrength, if any at all; it is but this: Earl* Hugh *was older then* Bertred, Ergo *he had a former Wife; and of your account, you ſay you may abate me ſeveral years, and yet Earl* Hugh *be a great deal older then his Wife: wherein you ſay true:* but I can gather no ſuch quantity of years in reſpect of his Age, reaſonably to ſuppoſe him to have had any former Wife.

[Page 50.] [50]*Page* 52.

The third and fourth Reaſons (you ſay) *are onely urged as concurrent Proof with the Argument brought from the words* in libero maritagio: *So then your Achillean Argument failing, all the other fall to the ground; to which hath been ſpoken before.*

Page 52, 53.

But yet you muſter up all your forces to ſtrengthen the third and fourth Reaſons for *Amicia: as* Hugh Cyveliok's *Counteſs being witneſs to the Deed of* Amicia in libero maritagio [*and yet you, that take no notice of the Law in ancient times from the Law of later Ages, and inſiſt ſo much upon Law, cannot but know a Wife is no good Witneſs either for or againſt her Husband, and yet both*

here and in ſundry other Deeds we find them put as Witneſſes to their Husbands Deeds:] *alſo* Raufe Manwaringe *calling his Daughter* Bertrede *after the name of* [51] *the Counteſs* [*methinks he ſhould rather have called her after the name of his former Counteſs, Mother of* Amice, *if Earl* Hugh *had had any ſuch Wife*] *alſo* Roger Manwaringe *in another Deed calling* Randle *Earl of* Cheſter *and* Lincolne *his Uncle:* Raufe Manwaringe *being with the Earl at* Coventry *and a Witneſs to his Charter to his Burgeſſes there: alſo* Roger Manwaringe *and* Henry de Audley *who Married his Siſter, being Witneſſes to the Deed of* Randle *Earl of* Cheſter *and* Lincolne, *concerning the Abby of* Deulacres: Henry de Audley's *being a Witneſs to the Deed of* Robert de Ferrars *(this is far fetcht) whoſe Mother was one of the Siſters and Coheirs to the aforeſaid Earl* Randle: *as alſo* Raſe Manwaringe *being a Witneſs to one Deed of* Hugh Cyvelioks, *and to three other Deeds of the ſaid Earl* Randle: *Theſe (ſay you) are ſuch circumſtances as ſhew a more great and conſtant intimacy between the ſaid two families, then probably would have been, if* Amicia *had been a Baſtard.* [Page 51.]

[52] To all which is eaſily anfwered, that being Witneſſes to Deeds argues no great intimacy with the Parties; and though the Judge in regard of his place were more converſant with the Earl, yet *Amicia* may be a Baſtard for all this: Let the Ingenious Reader judge. The like multitude of Charters, or more, you may find, whereto *Philip Orreby* Judge of *Cheſter* was Witneſs in like nature; and alſo many other Gentlemen, as well as *Roger Manwaringe* and *Henry de Audley:* But I ſpeak not this to leſſen your Family, but to ſhow the weakneſs of the Argument. [Page 52.]

Page 54.

You ſay, *Although I object that frequently in Hiſtories and Records Baſtards are called Brother, Uncle, Coſin, Son, and Daughter; you grant it to be true; but that (you ſay) was done*

either when Perſons came to be great, as Robert *Earl of* Gloceſter *did; or elſe done by their Relations out of humility. But I can*
[Page 53.] *hardly find one (you* [53] *believe) that I can certainly prove to be a Baſtard, or the Son of a Baſtard, who doth preſume in a Deed to call ſo great a Perſon as the Earl of* Cheſter *was, his Brother or Uncle, unleſs he came to be a very great Perſon himſelf.*

Indeed Precedents are ſcant; but ſome there be: What do you think of *Ranulpho de Aſtbury nepote Comitis Ceſtriæ;* who is put the laſt of all the Witneſſes in the Deed, as you may ſee in the *Addenda* of my Book? Certainly he was but an ordinary Gentleman, nor Knight, nor Lord: But you will ſay, I cannot prove him a Baſtard; yet I ſhould be glad to find out his Extraction, if he were not: 'tis a ſhrewd preſumption.

And now we ſhall come to another of like Nature.

Pag. 54.

Here you tell me, *you believe* Richard Bacun's *Mother was not a baſe Daughter of* Hugh Cyveliok, *nor any Daughter of his at*
[Page 54.] *all; becauſe we find* [54] *in* Monaſticon, *part* 2. *pag.* 267. *in his Deed of the Foundation of* Rouceſter-Priory *in* Staffordſhire, *his Unkle* Randle *was living (where take notice he calls* Randle *Earl of* Cheſter *his Unkle) and a* William *was then Archbiſhop of* York, *and* R. *then Biſhop of* Cheſter; *and there was neither Archbiſhop of* York *whoſe name was* Will. *nor Biſhop of* Cheſter *whoſe name began with* R. *in the time of* Randle Blundevil; *and therefore you think it was* Randle de Gernoniis, *that* Bacun *calls Unkle, and not* Randle Blundevil.

But truly you are deceived in it: For it is true, as you obſerve, that there was no ſuch Archbiſhop of *York* called *Will.* nor Biſhop of *Cheſter* whoſe Chriſtian Name began with *R.* both living at one time, either in the time of *Randle de Blundevil* or *Randle de Gernoniis,* that I can find: nor was the Biſhop of

Cheſter (being alſo Biſhop of *Lichfield* and *Coventry* at this time) then ſubject to the Juriſdiction of *York*, but *Canterbury:* Wherefore I do conceive the Roll, [55]from whence the Deed in [Page 55.] *Monaſticon* was written, is miſtaken in *Wil.* and *R.* and miſs-writ therein from the Original Chart it ſelf; ſo that certainly here is a miſtake: But that which is the greateſt certainty to guide us, is the body of the Deed it ſelf; which ſeems to be perfect and right; wherein he tells us, that he hath procured the Confirmation and Warranty of *Randle* Earl of *Cheſter* his Unkle for the ratifying of that his Grant. And the very next Deed following in the Roll, and tranſcribed in the *Monaſticon*, is the Deed of *Randle* Earl of *Cheſter* with Confirmation and Warranty accordingly; whereunto *Roger Lacy* Conſtable of *Cheſhire*, is a witneſs, who only lived in the time of *Randle Blundevil*, and of no other Earl of *Cheſter;* as you may ſee it clearly proved among the Barons of *Halton*, in my Book; nor is there any other Deed of Confirmation and Warranty to be found by any Earl, ſave this; wherefore certainly it muſt be *Randle Blundevil*, whom *Richard Bacun* calleth Unkle in his own Deed [56]of the Foundation of [Page 56.] the ſaid Priory; and then muſt it neceſſarily follow, that his Mother was the Daughter of *Hugh Cyveliok;* and it is plain, ſhe was no Co-heir to *Randle Blundevil:* and it doth not in the leaſt appear, that *Hugh* had any other wife, ſave *Bertred* the Mother of the Co-heirs: nor doth it appear, that ever ſhe had ſo much as any Land *in libero maritagio;* which you ſo much ſtand upon in the caſe of *Amicia.* And now let every man be Judge, whether I have aſperſed (as you call it) this Lady unjuſtly; and whether ſhe be not a Baſtard in the opinion of all impartial Readers: which word *aſperſed*, you might well have ſpared; for Aſperſion is when a man maliciouſly ſeeks to throw dirt in anothers face unjuſtly; of which ſort of men I hope you do not judge me to be. But theſe matters fall unavoidably in my way; the truth whereof (as near as I can) I only do endeavour to find out.

[illegible] *Pag.* [illegible]

And now you come to answer the Arguments and Reasons which I bring to prove *Amicia* a Bastard.

Arg. 1

If *Hugh Cyveliok* had no other Wife than *Bertred*, then *Amicia* must certainly be a Bastard; for she was not a Daughter of *Bertred*, as is granted on all sides:

But *Hugh Cyveliok* never had any other Wife than *Bertred*; Ergo *Amice* was certainly a Bastard.

Now the *Minor* is to be proved by the Affirmer: for *oportet affirmantem probare.*

Your Answer to the first Argument.

By this Rule (you say) *I am as much bound to prove her a Bastard, as you are bound to prove that* Hugh Cyveliok *had a former Wife; because I clearly affirm that, as you affirm the other.*

[Page 58] *My Reply to the first Answer.*

I confess what you say to be true; yet the Rule of the affirmative part to prove, in *Logick* alwayes holds true: for a Negative cannot be proved. But I say further, that I have proved her a Bastard by this Argument, unless he had a former wife; for you must either deny the *Major*, or the *Minor*, or grant them; wherefore the affirmative part lies now on your part to prove.

Your second Answer to my first Argument, pag. 58.

A less proof will serve by many degrees to prove a thing done long since, than will be requisite to prove a thing done lately; the

like reaſon is in all Caſes of Antiquity; So that if you only prove her called Daughter, being ſo long ſince, ſhe ought to be preſumed legitimate; unleſs the contrary do appear: for the proving ſhe was not by Bertred, *doth not prove ſhe was a Ba-*[59]*ſtard, but only proves* [Page 59.] *ſhe was either a Baſtard, or elſe by a former wife; and our Law at this day is, That a Baſtard ſhall not be allowed to be proved a Baſtard but in his life-time; why ſhould* Amice *then be charged with Baſtardy ſo many hundred years after her Deceaſe?*

My Reply to your ſecond Anſwer.

Where you ſay, if you only prove her called a Daughter, being ſo long ſince, ſhe ought to be preſumed legitimate till the contrary appear: I ſhall grant it; but here are many ſtrong reaſons to the contrary; and you are now to anſwer the Argument in hand; and for your aſſerting, that my proving ſhe was not by *Bertred*, doth not prove her a Baſtard, but proves ſhe was either a Baſtard, or elſe by a former wife; this is not to the Point; for the Argument runs, If he had no other wife but *Bertred*, and ſhe no Daughter to *Bertred*, then certainly if ſhe be a Daughter, and ſo called, ſhe muſt needs be a Baſtard: [60]and as to the point of [Page 60.] Law you urge, that a man cannot be proved a Baſtard but in his life-time to the prejudice of an Eſtate; becauſe the dead perſon cannot anſwer to the exception: Yet though the Law allows not this in Pleadings, what hinders but Baſtardy may be proved by Hiſtory or Argumentation, after the Parties death? Suppoſe in a Regiſter-Book I find ſuch a Baſtard Chriſtened one hundred years ago, may not I juſtly call that Perſon a Baſtard, whom I find ſo Regiſtred? The law may make a Baſtard legitimate by Act of Parliament: as we find in the caſe of *John* of *Gaunt*'s Children by *Katharine Swynford*, 20. *Ric.* 2. 1397. according to all intents and purpoſes in the Law, *excepta dignitate Regali*, whereby they ſhall inherit as if they had been lawfully born; but may not we therefore call them Baſtards? No Law can make a Baſtard once born, to be no Baſtard in nature; for

quod factum eſt ſemel, infectum reddi non poteſt. And to this
[Page 61.] your ſecond An-[61]ſwer, I believe it is clearly evinced without further demonſtration.

Your third Anſwer to my firſt Argument, p. 59.

You conceive that the paſſing of Services in libero maritagio *with* Amice, *doth abſolutely prove that ſhe was a lawful Child, and by conſequence muſt be by a former wife; and that ſhe would not have been ſtiled as ſhe is in the Deed, unleſs ſhe had been a legitimate Daughter: and you cite* Spelman's *quoting* Couſtum. du Normand. *Art.* 77. *Quoties enim agitur de honore vel commodo filiorum, appellatione filiorum non comprehenduntur Baſtardi.*

My Reply to your third Anſwer to my firſt Argument.

This is what before you have ſaid over and over again; and hath before been anſwered by me: But I conceive, that neither the naming of her Daughter in the Deed, nor paſſing of Services
[Page 62.] with her *in libero ma-*[62]*ritagio,* doth at all prove her legitimate; for I have before told you, and ſhall entreat the judicious Reader to look back where I have before ſpoken of it; That in thoſe ancient Ages the word daughter was frequently uſed without the addition of Baſtard, both in old Deeds and Hiſtories: nay rarely or never was it otherwiſe uſed even to Baſtards as well as Lawful Iſſue; whereof are ſundry Examples, as is well known to all ſuch as are skilled in Antiquities: and by your own Argument, if ſhe were not called his Daughter, no eſtate of inheritance could have paſſed by the Deed, though ſhe were a Baſtard; becauſe hereby ſhe is owned to be of his Kindred and Bloud; and that Lands have paſſed *in libero maritagio* to ſome ſuch, who are known to be Baſtards, though not ſo named; whereof I have ſhewed a Precedent of thoſe Ages in my Book, which is not reſelled yet by any ſolid Reaſon to the contrary, as the ingenuous
[Page 63.] Reader may perceive *ſupra,* pag. 34. of this Book, *& de-*[63]*inceps.*

And what you add out of *Spelman*, is little to the purpoſe, that in caſes of honour and profit diſtinction was then made, that by the appellation of Sons, Baſtards are not comprehended by the Cuſtoms of *Normandy:* what then? this ſuppoſeth that in other caſes and formerly by the appellation of Sons, Baſtards were comprehended: This makes directly againſt you: and you know what *Spelman* ſaith in the very words next following — *That the ancient Northern People admitted Baſtards to ſucceed in their Inheritance; and that* William *the Conquerour was not aſhamed of that Title, who began his Letter to* Allan *Earl of* Little Britaine *(as he did many others)* Ego *Willielmus* cognomento *Baſtardus.* But what is all this to the anſwering of the Argument, or proving *Hugh Cyveliok* to have had a former Wife? only you would have the words *in libero maritagio* to prove *Amice* abſolutely legitimate: this is all the Anſwer you give to the Point; and this will not do it, as is before proved; whither [64]I have referred the Ingenious Reader. [Page 64.]

Your fourth Anſwer to my firſt Argument, p. 60, 61.

And here you ſay, that *if all muſt be Baſtards, if we could not tell who were their Mothers, nor directly prove their Fathers married, we might then conclude moſt Perſons Baſtards; and ſo you could frame my own Argument againſt me thus; — If* Roger Manwaringe *(who lived about* 1119.*) had no wife, then* William, Randle, *and* Wido *(Sons of the ſaid* Roger*) were certainly Baſtards: But* Roger Manwaringe *aforeſaid had no wife;* ergo, *&c. Now if this Argument againſt* Amicia *will hold, it would alſo hold againſt theſe three Children of* Roger, *and ſo againſt all others in like nature.*

[65]*My Reply to your fourth Anſwer to my firſt Argument.* [Page 65.]

Here you argue well; and I ſay to your *Minor*, that *Roger* had a Wife, though we yet know not who ſhe was: and this

appears certainly, becauſe the Lands deſcended from heir to heir. But I frame my affirmative part more formally thus: If the Son and Heir of *Roger* ſucceeded by deſcent in his Inheritance, then *Roger* had a wife; But the Son and Heir of *Roger* ſucceeded by deſcent in his Inheritance; this is apparent by the enjoyment thereof from heir to heir; *ergo, Roger* had a wife.

If you deny the Sequel of the *Major*, I prove it thus — No Baſtard can ſucceed in the Inheritance without a ſpecial ſettlement; *ergo*, if the Son and Heir of *Roger* ſucceeded by deſcent in the Inheritance, then *Roger* muſt needs have a Wife; and nothing appears here of any ſpecial ſettlement.

And ſo you ſee, the Argument retorted is anſwered.

[Page 66.] [66]Now if you could prove by like Reaſon, that *Hugh Cyveliok* had a former wife before *Bertred*, it would be ſome Anſwer; but the paſſing of Lands *in libero maritagio* in that age, is no certain Argument of Legitimacy; for then I confeſs you would prove *ex conſequenti* Hugh Cyveliok muſt needs have another wife; which is the chief conteſt between us; for all the reſt of your Arguments for her Legitimacy, are little material, and not ſolid. Now you repeat this often over and over again, where you have as oft been told, that Land in thoſe former Ages did paſs to Baſtards *in libero maritagio;* whereof I have given you one Precedent; which neither yet hath been, nor (as I conceive) can be rationally anſwered; Beſides the words of *Glanvil*, implying the ſame; and the Term of Baſtard, was, for certain, uſually omitted in the Deeds and Hiſtories of thoſe times; and the owning them for Daughters in their Deeds, poſſibly that the

[Page 67.] Lands might paſs to their Heirs, as owning them [67]to be of their Kindred and Bloud, are all Reaſons againſt the Deed; that it doth not prove her legitimate: Neither is the Caſe of *Amice*, and the three Sons of *Roger* alike; for there is nothing that appears againſt them, either to prove or ſuſpect them for Baſtards, as there is in the caſe of *Amice;* for here is a wife of *Hugh Cyveliok* certainly recorded; a Son and four Daughters carrying away all Earl *Hugh*'s Lands: alſo Earl *Hugh* certainly

known to have ſundry Baſtards; and *Amice* having no ſhare of any of the Lands whatſoever, though the Eldeſt Daughter of Earl *Hugh* legitimate by a former wife, as you ſuppoſe: all which carries more than a bare probability that *Amice* was a Baſtard. And therefore here is a neceſſity of proving a former wife, which I firmly believe Earl *Hugh* never had: And to this you ſay, the falling of the great Eſtate to the Co-heirs, was the cauſe of their being taken notice of by the Hiſtorians of that Age; which Inheritance (ſay you) came to them as Siſters to *Ran-*[68]*dle* of the whole bloud (although you prove not that Earl *Hugh* ever had any other wife) and *Amice*, you ſay, was of the half bloud; but you prove it not. And you ſay further, that *Ric. Bacun*'s mother was not any Child of Earl *Hugh:* But that ſhe was Earl *Hugh*'s Daughter, I have clearly proved before, *pag.* 54. 55. 56. So that all theſe ſtrong Preſumptions of the Baſtardy of *Amicia*, I leave to the Reader, to judge whether any thing hath been ſubſtantially ſaid by you to evince any mans impartial judgment to the contrary, or that hath at all anſwered my firſt Argument. [Page 68.]

And now you come to anſwer my ſecond Reaſon or Argument againſt *Amicia*, which I framed thus, — Whatſoever is given in frank-marriage, is given as a Portion; now the releaſe of the Service of one Knights Fee in Frank-marriage (according to your Deed) ſeems not a competent portion for a legitimate Daughter of the Earl of *Cheſter;* eſpecially for the eldeſt Daughter: for ſo ſhe muſt [69]be, being of the firſt venter, which is always more worthy then the ſecond; and we find the other Daughters Married to four of the greateſt Perſons in *England*, which is a ſtrong Preſumption that *Amice* was a Baſtard: methinks *res ipſa loquitur.* [Page 69.]

Your Anſwer to my ſecond Argument, Pag. 64. 65.

To which you Anſwer, *That it will not hold; for though what*

is given in Frank-marriage, be given in conſideration of a Marriage, yet it cannot properly be called a Portion — &c. and further you ſay, that if ſhe had been but a Baſtard, yet being a Baſtard of ſo great a Perſon, ſhe would have had a great deal more given her then theſe ſervices —— But you perceive, if this Deed of Earl Hughe's *had been loſt, I would not have believed that Sir* Raufe Manwaringe *had had any thing with* Amicia: *becauſe then it would not have appeared: which is a ſtrange way of arguing, about things*
[Page 70.] *that were done ſo long* [70] *ſince. And if this be a good Reaſon, you wonder I do believe that Earl* Hugh *had any Portion with his Counteſs* Bertred, *becauſe (for ought you yet know) it doth not appear that he had. Again you ſay to my alledging how the other four Siſters were Married, that you have anſwered that before. And though I ſay, that if* Amice *had been legitimate, ſhe being of the firſt venter, would have been more worthy then thoſe of the ſecond — yet in this Caſe, when there be Siſters of two Venters, and the Brother be of the ſecond Venter, and the Siſters claim as Heir to their Brother, then the Siſters of the Second Venter ſhall be preferred before thoſe of the firſt Venter: and then you cloſe your Anſwer in telling me that you do not underſtand why I call this gift of Earl* Hugh's *(as I do in two ſeveral places) a Releaſe of the ſervice of one Knights-Fee.*

[Page 71.] [71] *My Reply to your Anſwer to my ſecond Argument.*

Whereunto I Reply, to what is neceſſary to be replied unto herein; firſt, whereas you ſay, *That if ſhe had been a Baſtard, yet being a Baſtard of ſo great a Perſon, ſhe would have had a great deal more then thoſe ſervices given her:* it may be ſo; what then? here is no reaſon that we can ſuppoſe ſhe had any more Lands, neither any Money anſwerable to the eldeſt Daughter of the Earl legitimate, for the other Siſters had all the Lands of Earl *Hugh;* and we find not any more Lands bought by Earl *Hugh* for *Amicia;* but you perceive, that if this Deed had been loſt, I would not have believed, that Sir *Raufe Manwaringe* had had

any thing with *Amicia;* which (ſay you) *is a ſtrange way of arguing about things done long ſince:* and how do you know, that I ſhould have believed that he had had nothing at all? but you would have me ſuppoſe, that *Amicia* had as much [72]Money [Page 72.] as any of the Co-heirs; I am ſure ſhe ought to have had ſo, had ſhe been legitimate; but I believe neither you, nor I, nor any other Perſon can imagine ſo: And if the Deed mentioned had been utterly loſt, I ſhould not then have believed that there was ſuch a Deed: for how can any man believe that which he never knew, nor heard of? *de non Apparentibus, & non Exiſtentibus, eadem eſt ratio:* and though I may well ſuppoſe, that Earl *Hugh* had a good Portion with his Wife; becauſe he was ſo great a Perſon, yet neither I nor any perſon (that knows it not) can well gheſs what it was. And had it only appear'd by Record, That Sir *Raufe Manwaringe* had Married the Earl of *Cheſter's* Daughter, and nothing appeared what was given, I ſhould then have believed ſhe had had a greater Portion given her, then what is mentioned in your Deed: but the Deed appearing, and ſo ſmall a Portion mentioned therein, makes it more ſtrong that *Amicia* was a Baſtard. [73]And laſtly, that you may underſtand, what I [Page 73.] mean by calling Earl *Hugh's* grant a Releaſe of the ſervice of one Knight's Fee; becauſe the grant to *Raufe Manwaringe* with *Amicia* in Free Marriage is only the ſervice of *Gilbert* Son of *Roger*, to wit, the ſervice of three Knights Fees, he and his Heirs doing to Earl *Hugh* and his Heirs the ſervice of two Knights Fees: ſo as the Earl hereby reſerves to himſelf the other two Knights Fees as formerly; but now remits the ſervice of the third Knights Fee: nor is it the grant of any Land, but of ſervices incident to Land; but what all this is to the taking of the Argument propoſed, I leave to the Reader to Judge.

Thirdly.

And now you come to my third and laſt Reaſon, which I did put as a probable concurring Reaſon, That all the Ancient Hiſ-

torians of our Nation, who lived in that Age, and have Recorded
[Page 74.] the other Daughters [74]and Co-heirs; yet not one of them mentioning *Amicia:* which probably one or other would have done, had ſhe been a legitimate Daughter.

Your Anſwer to the third Reaſon, Page 67.

Whereunto you ſay, *You conceive there is no weight at all in it; whereof I am ſo ſenſible, that I conceive it not evincing; nor do thoſe Antient Hiſtorians take upon them to give an account of all the Children of Earl* Hugh, *but onely of the Heirs of* Randle Blundevill: *and yet (you ſay) this Reaſon is as ſtrong as my firſt Reaſon.*

My Reply.

I do confeſs I urged it but for a probable Reaſon; and yet (you ſay) it is as ſtrong as the firſt Reaſon: Then you might have done well to have anſwered the firſt better: whereunto I am ſure you have made no ſubſtantial Anſwer as yet: wherein I
[Page 75.] appeal to all indifferent and ju-[75]dicious Readers, who ſhall read this Book. And for the probability of this, you ſay, *That the Hiſtorians take not upon them to give an Account of all the Earls Children, but the Heirs of Randle;* but do you find that they have left out any of his legitimate Children, except this whom you ſuppoſe legitimate?

And then you tell me, *Mr.* Cambden *hath mentioned* Amicia, *though not among the Co-heirs, yet without the brand of a Baſtard:* you know well, he is but of very late ſtanding, and not an Hiſtorian Contemporary with *Amicia:* and ſo you and I do now mention her. And then you tell me over again (which I have before Anſwered) that thoſe Judges and Heralds that have ſeen your Deeds (of which I have heard, but I am ſure I yet know not who they be, nor ever ſaw any thing atteſted under any of their hands, nor their Reaſons nor grounds for their Opinion) and you

mention Mr. *Dugdale* in particular, for whom I have ever had a great eſteem as a diligent [76]ſearcher of Antiquities, all which you again and again affirm to be of your Opinion, that *Amicia* was legitimate; but becauſe I have before ſpoken of this *Supra, pag.* 19, 20. I ſhall onely ask here, what weight can be drawn from this? ſome Perſons are of that Opinion, *Ergo* it is ſo: whole Councels have erred, unleſs like the Romaniſts, you will ſay *The Pope cannot err:* And perhaps thoſe Perſons you mention, never heard what is to be ſaid againſt that Opinion: whereas it were but equal that in conſultation of Opinions, both ſides ſhould ſhow what could be ſaid *Pro* and *Con* both together; which hitherto (for ought I know) onely one Party hath privately put the Caſe, as he pleaſeth; I have often told you, I would have you confute me with Reaſon, not Opinions: for one man may be of one Opinion, and another man of another Opinion; but it is firm Reaſon which muſt ſway every mans Judgment. [Page 76.]

[77] *Page* 69, 70, 71, *&c.* [Page 77.]

And laſtly, *you put down two Deeds, wherein Sir* Raufe Manwaringe *Juſtice of* Cheſter *is ſubſcribed Witneſs before the Barons of* Cheſhire; *for which you think it will be difficult to give a Reaſon, if* Amice *were a Baſtard.*

To this I ſay, it will not be difficult at all to give a Reaſon: and much more eaſie, then to give a Reaſon, why *Amice* ſhould be no Baſtard, becauſe Sir *Raufe Manwaringe* is ſometime Subſcribed before the Barons of *Cheſhire.* The Reaſon I give is this, that antiently in thoſe Ages, the Juſtice was put ſometimes before the Barons, and ſometimes after; and ſometimes after the Conſtable, and Dapifer, and before the reſt of the Barons, as it happened: for proof, ſee the Deed in my Book making the Baron of *Halton,* the prime Baron, *pag.* 160. where the Juſtice comes after all the Barons; alſo in the Deed [78]of Earl *Randle* to his Barons, *pag.* 162. where the Juſtice comes next after the [Page 78.]

Conſtable and Dapifer, and before the other Barons; ſee alſo in my Book, *pag.* 130, 131. two Deeds made by *Hugh Cyveliok:* In the one, the Juſtice is put after the Conſtable and Dapifer: In the other, the Juſtice is put before them; many other like examples may be produced elſe where: I will appeal herein to Mr. *Dugdale,* or to any Antiquary in *England:* and conſidering the great uncertainty of Subſcription of Witneſſes in old Deeds, ſometimes putting one before another, in one Deed, and again putting the ſame Perſon after the other in another Deed; ſometimes putting *Domino* prefixed before the names of ſome Perſons in one Deed, and omitting the word *Domino* before the names of the ſame Perſons in another Deed, whereof I have ſpoken, *pag.* 5, 6. in the beginning of this Book. I ſay, had you well conſidered or obſerved theſe things, it was not worth your labour to
[Page 79.] have added thoſe three or [79]four leafs in the cloſe of your Book. And now I appeal to all Readers, whether thoſe Grounds and Reaſons alledged in my former Book againſt the legitimacy of *Amicia,* as alſo to prove the Baſtardy of thoſe two other Ladies (as you call them) *Geva,* and the Mother of *Richard Bacun,* be evinced by any ſolid Anſwer or Reaſon given yet to the contrary.

And ſo I take my leave for ever of this Trivial Controverſie; but ſhall ever remain,

SIR,

Mobberley
May 15. 1673.

Your affectionate Coſin
and very humble
Servant,

PETER LEYCESTER.

[81] Courteous Reader, [Page 81.]

I *Have here in the end of this Book an opportunity to Rectifie ſome Omiſſions and Errours in my former Book, which eſcaped me through miſinformation of others, and deſire thee to pardon and amend them, as followeth.*

Page 206. *after thè laſt line but two, ſhould have followed thus —*

— Alſo another *John Brereton,* ſon of *George Brereton* of *Aſhley* Eſq; was Baptiſed at *Bowdon* the 20th day of *June,* 1576. he was afterwards Sir *John Brereton* Knight, the King's Serjeant at Law in *Ireland;* he died without Iſſue, whoſe Widow Married the Lord Chief Juſtice *Bramſton:* Sir *John* left all his Perſonal Eſtate (which was great) to his Widow, and *Sidney*-Colledge in *Cambridge* where he was educated, and to *Randle Brereton* his youngeſt Brother; which *Randle* lived in *London* [82] and Married, [Page 82.] and had Iſſue by his Wife a Daughter Married to Mr. *Bourcher* of *Gloceſterſhire,* and a Son called alſo *Randle Brereton* who hath an Eſtate in *Lincolnſhire,* and is the onely Iſſue Male, or Heir-male, of all the Family of the *Brereton*s of *Aſhley* now ſurviving, 1672.

Page 210. *line* 27.

Where theſe words [*With the little Fields above, lying up to* Aſton *Town-field*] are totally to be expunged.

Page 214. *line* 18, 19.

Where it is ſaid — [*Daughter and ſole Heir of Sir* Henry Willoughby] Read — *Daughter and ſole Heir to her Mother, and Daughter and Co-heir to her Father Sir* Henry Willoughby; *for Sir* Henry *had three Daughters and Co-heirs:* Anne, *after the death of Sir* Thomas Aſton, *Married Mr.* Gray *younger Son of the Earl of* Stamford; *ſhe was by the firſt Wife of Sir* Henry; *he had alſo two Daughters by his ſecond Wife.*

[Page 83.] [83] *Ibidem page* 214. *line* 25.

Read — *He was Loyal to his Prince, and raiſed a Regiment of Dragooners for the King at his own coſt and charge, and was a Gentleman of good Parts: but was unfortunately* — &c.

Page 223.

The 6, 7, 8. lines are to be expunged totally.

Page 233. *line* 4.

There it is ſaid — *Maud* Married Sir *Robert Nedham* of *Shenton* in *Shropſhire*] which words are to be expunged there.

Page 315. *line* 5.

Where it is ſaid — *George Venables* of *Agden* Eſq; one ſmall Tenement] Read — *George Venables* of *Agden* Eſq; three ſmall Tene-
[Page 84.] ments in *Mere*, in poſſeſſion of *William Occleſton*, *Mi-*[84]*chaiah Bower*, and *Peter Chorton.*

Page 315. *line* 13.

It is there ſaid — *Edward Allen* of *Roſthorne*, one ſmall Tene-

ment in *Mere*] Read thus — *Edward Allen* of *Roſthorne,* one ſmall Tenement in *Mere* in poſſeſſion of *Henry Hunt,* and two parts of *John Occleſton's* Tenement.

Pag. 316. *line* 18, 19.

Where it is ſaid — *Geffrey Cartwright* Gentleman, hath lately bought the *Shaw-houſe* in *Millington,* from *Millington* of *Millington*] Read thus, — *Geffrey Cartwright* Gentleman, hath the *Shaw-houſe* in *Millington,* which *Richard Cartwright* his Father bought of *Thomas Shaw,* 1646. which Land was formerly *John Wilkinſon's*; and *Shaw* came to it by Marriage.

[85] *Pag.* 326. *lin.* 16. [Page 85.]

Where it is ſaid — *Came to* Francis Cholmondeley] Read thus — *Came to* Francis Cholmondeley *for his life.*

Pag. 327. *line* 10, 11.

It is ſaid — *Thomas Brooke,* Second Son married *Jane* Daughter of one *Weſton* of *Sutton* nigh *Frodſham,* Tenant to *Warburton* of *Arley*] inſtead whereof read — *Thomas Brooke,* ſecond Son, married *Jane Woodfen,* Daughter of *Richard Woodfen* of *Sutton* near *Frodſham*-Bridge: Her Mother afterwards married *William Weſton* of *Aſtmore* in *Halton;* ſo that *Weſton* was but her Stepfather.

Pag. 327. *line* 13.

Where it is ſaid — *Richard Brooke,* third Son of Sir *Richard,* Profeſſor of *Phyſick,* died at *Boughton* nigh *Cheſter,* without Iſſue, *anno Dom.* 1667.] [86]put out the words [*without Iſſue*]: for he had Iſſue by *Sarah* his former wife, daughter of Judge *Warburton* of *Hifferton*-Grange in *Weverham*-Lordſhip; although he [Page 86.]

had no Iſſue by *Anne* his latter wife, the Widow of *Edward Holland* of *Denton* in *Lancaſhire*, Eſq; and Daughter of *Edward Warren* of *Pointon* in *Cheſhire* Eſq;.

Pag. 334. *line* 33, 34.

Where it is ſaid — *Which Chappel* Margery *his Wife ſurviving erected, with the two Monuments therein for her ſelf and Husband,* anno Dom. 1456.] inſtead whereof, read thus, — *Which Chappel this* Randle *cauſed to be erected, with the two Monuments therein for himſelf and wife,* an. Dom. 1456.] *for* Margery *died before him,* to wit, 27. *Hen.* 6. *and he died* 35. *Hen.* 6.

Page 280. *line* 44.

Where in the Margin it is ſaid — *Corrupte pro ſaltuariis, id eſt,*
[Page 87.] For-[87]reſtars] Read — *Corrupte pro ſaltationibus, aut ſaltatoriis, id eſt,* Deer-leaps.

Pag. 335. *line* 12.

Where is omitted as followeth — Agnes, *another Daughter of* John Manwaringe, *Eſquire, married Sir* Robert Nedham *of* Crannach *in* Cheſhire *Knight, and afterwards of* Shenton *in* Shropſhire; *which* Shavington, *vulgo* Shenton, *was eſtated on him by Judge* Nedham, *who purchaſed the ſame: And this Match appeareth by a blewiſh Marble-ſtone or Monument, in the Chancel of* Adderley-*Church in* Shropſhire; *whereon are the Pictures of the ſaid Sir* Robert Nedham *and Dame* Agnes, *and ſeven Sons and two Daughters; as alſo an Inſcription (all of them in Braſs) as followeth,* —

Here lieth buried under this Stone the Bodies of Sir Robert Nedeham **Knight, and Dame** Agnes

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his Wife, Daughter of John Manwaringe of Pever Esq; : which [88]said Robert deceased the iiij. day of June, *Anno Dom.* 1556. And the said Agnes deceased the 11. day of May, *Anno Dom.* 1560. [Page 88.]

Page 345. *line* 36.

The word [*where*] is to be expunged: for the Lady *Mary Cholmondeley* died at *Vale-royal*, which she purchased, and gave it to *Thomas Cholmondeley* her fourth Son, and his Heirs.

Page 361, *line* 19.

Where it is said — *Died unmarried*, 1653.] Read — *Was never married; he drowned himself the sixth day of* July, 1653.

Page 374. *line* 4.

Read Sir *Amos Meredeth* Baronet of *Nova Scotia. a.*

Page 376. *line* 26.

Where is omitted — *Hugh Toft*, [89]another Son, Parson of *Alderley*, and after of *Stopport*, 8. Hen. 4. *lib. C. fol.* 229. *T. num.* 40, & 42. [Page 89.]

Anno 1402. 3. Hen. 4. 29. Novem. *Nobilis Vir* Johannes le Manwaringe *Dominus de* Stockport *præsentat ad Ecclesiam de* Stockport *Hugonem* de *Toft Capellanum, post mortem* Jocobi *de* Bagiley *ultimi Rectoris*, lib. B. p. 12. d.

Page 381. *line* 28.

Where is omitted — *also another Son, called* William Leycester, who *died without Issue.*

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Page 392. *line* 22.

Where ſhould follow thus — *The ſaid* Robert Venables *bought all the Demain-Lands, and alſo* Wood's *Farm with the Mills, called* Cranage-*Mills. But the Tenements were ſome of them bought by the Tenants themſelves, and ſome of them by others.*

[Page 90.] [90] *Page* 437. *line ult.*

Add there thus — *Only* Dodleſton *remains yet to* Cheſhire, *and* Marleſton *nigh* Eccleſton, *and* Claverton *and* Lache *nigh* Cheſter; *which were all part of* Atiscros-Hundred.

Theſe Amendments, Reader, will ſet thee ſtraight in the Peruſal of my former Book; together with the correction of the Errata's *of Printing; committed by the great negligence of the Printer; which are now mentioned and rectified by a diſtinct Page at the end of the ſaid Book.* Farewel.

FINIS.

The Twenty-sixth Report

OF THE

COUNCIL OF THE CHETHAM SOCIETY,

Read at the Annual Meeting, held, by permission of the Feoffees, in the Audit Room of Chetham's Hospital, on the 1st of March, 1869.

THE first work for the year 1868–9, and the seventy-fifth in the Chetham Series, is *Lancashire Funeral Certificates, collected from various sources.* Edited by THOMAS WILLIAM KING, Esq., F.S.A., York Herald. With additions by the VICE-PRESIDENT of the Chetham Society.

Funeral Certificates are, as is well known, among the most valuable materials of Genealogy and History. From what cause it has happened it is difficult to conjecture, but the fact is clear that the number of those which have yet been found relating to Lancashire is much more scanty than the long list and importance of its ancient families, noble and gentle, would naturally lead an inquirer to expect. What however his research enabled him to collect, the York Herald has brought together in this publication, and these valuable documents have been taken as a text by the Vice-president of the Chetham Society, who has illustrated them by an ample commentary from his multitudinous stores of biographical and genealogical information, and which will be read with great interest by every one to whom the family history of Lancashire is a subject of attraction. Amongst the families, to individuals of which the Certificates refer, are the Radcliffes, Stanleys, Norris's, Barlows, Irelands, Molineux's, Traffords, Fleetwoods, Moores, Bolds and Mosleys; and there are two names in the series which never fail to bring to mind the piety and charity of the olden time, Katherine Brettargh the sister of John Bruen, and George Clark the eminent benefactor of Manchester.

The second and third of the publications for the year 1868–9, and the seventy-sixth and seventy-seventh in the Chetham series, are *A Collection of the Tracts published* 1673–9, *in the Controversy between Sir Peter Leycester and Sir Thomas Mainwaring, as to the legitimacy of Amicia, daughter of Hugh Cyveliоc, Earl of Chester.* Edited by WILLIAM BEAMONT, Esq., in 2 vols.

The controversy on the subject of *Amicia* is one unique in its kind. The war between these two doughty baronets on the question of the legitimacy of an ancestor living 500 years before, from whom they were both, as well as the royal family of England, descended, lasted six years, and gave rise to fifteen tracts or pamphlets. The admirable historian of Cheshire, whose motto was, *Amicus Socrates, amicus Plato, sed magis amica Veritas*, and who

would not have sacrificed one atom of truth to remove what might be considered a blemish from the most illustrious pedigree, contended firmly, after arriving at the conscientious conclusion with many a sigh and, perhaps, some tears, that this great lady, who married Ralph Mainwaring, judge of Chester, was base born, while Sir Thomas Mainwaring, with all the learning of a profound legal antiquary and all the chivalric spirit of a gallant cavalier, indignantly repudiated the charge, and again and again broke a lance in her defence in this solemn but bloodless genealogical tournament. The death of Sir Peter Leycester closed this controversy, which otherwise might have outlasted the siege of Troy, and all that was left for Sir Thomas was to publish a recapitulation of the arguments in dispute in a final pamphlet, and to claim the honour of victor in the duello, in which he was supported, if not by all, by most of the antiquaries and lawyers of his day. In the course of the dispute it was necessary to discuss many curious and recondite questions of history and law, and these are dealt with so ably and learnedly that the tracts will always have a value, independently of their bearing on the main subject on which the controversy hinges. It has long, therefore, been felt that a republication of the whole of the series of tracts was most desirable, and, in 1854, Mr. J. G. Bell printed one which had previously remained in manuscript, which he dedicated to the President and Members of the Chetham Society, with a preface by the late Dr. Turnbull. Some, however, of the printed tracts are so rare that it was most difficult to meet with a complete series of them, and it was not till Sir Harry Mainwaring, the present worthy representative of the family, most kindly placed at the command of the President his perfect collection of them that a satisfactory publication became practicable. The tracts now printed include the whole that appeared in the controversy, and the introduction prefixed to them by the editor, W. Beamont, Esq., will afford an excellent condensed view of the arguments on each side and the various points involved in this famous family dispute, which is, taking into consideration the nature of the question, the relationship of the opponents, and the manner in which the battle-royal is conducted, without a parallel in genealogical history.

The expense of engraving the portrait of Sir Thomas Mainwaring, to accompany the work, has been kindly contributed by W. M. Cunliffe Brooks, Esq., F.S.A.; and the expense of engraving that of Sir Peter Leycester by R. H. Wood, Esq., F.S.A., the zealous and indefatigable Hon. Secretary, to whom respectively the grateful thanks of the members are due.

The three volumes thus enumerated have been retarded by various circumstances, which it is unnecessary to mention, but are all in a state of great forwardness, and will very shortly be issued to the members.

Since the last annual meeting the Chetham Society has undergone a severe loss in the death of the late Mr. JOHN HARLAND, F.S.A., who had been for thirteen years a member of the Council, and who had edited no less than fourteen valuable volumes in the Chetham Series. So large, indeed, had been for many years his contributions to the publications of the Society, and so generally have they met with the approval of the public, that amongst the names of those who have deserved best of the Society and most aided its progress and success, that of Mr. HARLAND will ever be numbered. It would be difficult indeed for language to do justice to the obliging readiness with which he took up any suggested work, and the energy and perseverance with which it was carried through, to his extraordinary fund of antiquarian and general knowledge, to the thorough discipline of mind which rendered him one on whom reliance could always be placed, to the good temper with which he encountered objections, to his perfect freedom from the vanity of authorship, and to the various other qualities which made him so pleasant, as well as so useful, an ally in literary and antiquarian undertakings. That such a man should be taken away in the prime of life, and in the midst of his career of usefulness, must always be, to those who consider what he might have executed had longer life been vouchsafed him, a matter of profound regret.

The Council feel also called upon to advert to the loss of another member of the Society, the late BENJAMIN D. NAYLOR, Esq., who joined it at its formation, and who had for some years obligingly acted as one of the auditors of the annual accounts. In the Chetham Society Mr. NAYLOR took great interest, having many antiquarian sympathies, and it was gratifying to see as an almost constant attendant at its annual meetings one whose co-operation was always of value and was always cheerfully afforded, and who was himself descended from a brother of the venerated individual from whom the Society takes its name.

The publications contemplated, or in progress, are:

1. *Observations and Instructions Divine and Moral, by Robert Heywood of Heywood, co. Lanc.* From an unpublished Manuscript. Edited by JAMES CROSSLEY, Esq., F.S.A., President of the Chetham Society.

2. *Collectanea Anglo-Poetica*, Part 4. By the Rev. THOMAS CORSER, M.A., F.S.A.

3. *The Visitation of Lancashire in* 1532. Edited by WILLIAM LANGTON, Esq.

4. *The Register of the Manchester Free Grammar School, with Notices and Biographies of distinguished Scholars.* Edited by the Rev. J. FINCH SMITH, M.A., Rector of Aldridge. Vol. 3.

5. *Worthington's Diary and Correspondence.* The concluding part. Edited by JAMES CROSSLEY, Esq., F.S.A., President of the Chetham Society.

6. *Documents relating to Edward third Earl of Derby and the Pilgrimage of Grace.* By R. C. CHRISTIE, Esq., M.A.

7. *A Selection from the Letters of Dr. Dee, with an introduction of Collectanea relating to his Life and Works.* By THOMAS JONES, B.A., F.S.A., Librarian of Chetham's Library.

8. *Poem upon the Earls and Barons of Chester*, in 62 octave stanzas, from an ancient MS. belonging to John Arden, Esq., of Stockport, believed to have been written by Richard Bostock of Tattenhall, gent., (a copy of which is in a MS. volume written by the Rev. John Watson, rector of Stockport, M.A., F.S.A., from which the present transcript was taken.)

9. A republication, with an introductory notice of, *A true Narrative of the Proceedings on the several Suits in Law that have been between the Right Honble Charles Lord Gerard of Brandon, and A. Fitton, Esq., by a Lover of Truth.* 4to, printed at the Hague, 1663; and the other tracts relating to the same subject.

10. *Selections from the Correspondence of Sir William Brereton relating to affairs in the county of Chester during the Civil Wars.* From the originals contained in seven large folio volumes in the British Museum.

11. *A Collection of Ancient Ballads and Poems, relating to Lancashire.*

12. *Diary of John Angier, of Denton, from the original Manuscripts, with a reprint of the Narrative of his Life published in* 1685 *by Oliver Heywood.*

13. *A Selection from Dr. John Byrom's unprinted Remains in Prose and Verse.*

14. *A new Edition of the Poems Collected and Published after his Death, corrected and revised, with Notes, and a Prefatory Sketch of his Life.*

15. *The later Heraldic Visitations of Lancashire.*

16. *Hollinworth's Mancuniensis.* A new Edition. Edited by CANON RAINES.

17. *A Volume of Extracts, Depositions, Letters, &c., from the Consistory Court of Chester, beginning with the Foundation of the See.*

18. *Extracts from Roger Dodsworth's Collections in the Bodleian Library at Oxford relating to Lancashire.*

19. *Annales Cestrienses.*

20. *Chetham Miscellanies.* Vol. 4.

21. *A General Index to volumes XXXI. to LX. of the Publications of the Chetham Society.*

The Treasurer in Account with the Chetham Society, for the year ending 27th February, 1869.

DR. **CR.**

		L.	S.	D.
1	Subscription for 1863-64 (21st year), reported in arrear at last meeting.			
1	Collected	1	0	0
3	Subscriptions for 1864-65 (22nd year), reported in arrear at last meeting.			
1	Collected	1	0	0
2	Outstanding.			
7	Subscriptions for 1865-66 (23rd year), reported in arrear at last meeting.			
2	Collected	2	0	0
5	Outstanding.			
10	Subscriptions for 1866-67 (24th year), reported in arrear at last meeting.			
3	Collected	3	0	0
7	Outstanding, of which 1 is considered irrecoverable.			
49	Subscriptions for 1867-68 (25th year), reported in arrear at last meeting.			
21	Collected	21	0	0
28	Outstanding, of which 1 is considered irrecoverable.			
12	Subscriptions for 1868-69 (26th year), accounted for at the last meeting.			
49	Life Members reported at the last meeting.			
1	since dead.			
48				
1	Commuted into Life Membership	10	0	0
216	Collected	216	0	0
277				
73	Arrears.			
350				
13	Subscriptions for 1869-70, paid in advance	13	0	0
1	Subscription for 1870-71, paid in advance	1	0	0
	Books sold to Members	23	14	0
	Book Postage received	0	1	6
	Dividends on Consols	7	6	4
	Interest from the Bank	5	2	6
		£304	4	4
	Balance 1st March, 1868	534	2	3
		£838	6	7

1868.		L.	S.	D.
Mar. 27.	Engraving Petition to Duchy Office	0	3	6
	Advertising	0	9	0
	Copy of De Lacy Inquisition	1	1	0
June 27.	County Fire Office (Insurance)	4	2	6
July 23.	Charles Simms & Co.:			
	(Vol. 73) *Manchester School Register*, Vol 2	180	7	3
	(Vol. 74) *Three Manchester Documents*	74	11	9
	Binding, &c., Vols. 73 and 74	56	4	11
	Printing and Sundries	11	14	3
1869.				
Feb. 25.	Advertising	0	18	0
		£329	12	2
	Balance 27th February, 1869	508	14	5
		£838	6	7

March 18th, 1869.

Audited and found correct,

GEORGE THORLEY,
GEORGE PEEL,
HENRY M. ORMEROD,
} AUDITORS.

A. H. HEYWOOD, *Treasurer.*

Chetham Society.

LIST OF MEMBERS

FOR THE YEAR 1869—1870.

The Members, to whose names an asterisk is prefixed, have compounded for their Subscriptions.

ACKERS. B. St. John, Pricknash Park, near Gloucester
Adams, George Edward, M A., F.S.A., Rouge-dragon, College of Arms, London
Agnew, Thomas, Manchester
Ainsworth, Ralph F , M.D., F.L.S., Manchester
Allen, Joseph, Tombland, Norwich
Armitage, Samuel, Pendleton, Manchester
Armstrong, Rev. Alfred Thomas, M.A., Ashton Parsonage, Preston
Ashton, John, Warrington
Ashworth, Henry, The Oaks, near Bolton
Aspland, Alfred, Dukinfield
Aspland, Rev. R. B., Well Street, Hackney, London
Athenæum Club, London
Athenæum, Liverpool
Athenæum, Library, Boston, U.S.
*Atherton, Miss, Kersall Cell, near Manchester
Atherton, James, Swinton House, near Manchester
Atkin, William, Little Hulton, near Bolton
Atkinson, William, Ashton Heyes, near Chester
Avison, Thomas, F.S.A., Liverpool
Ayre, Thomas, Trafford Moss, Manchester

BACUP Co-operative Store, Bacup
Bagshaw, John, Manchester
Bain, James, 1, Haymarket, London
Baker, Thomas, Brazennose Street, Manchester
*Bannerman, John, York Street, Manchester
*Barbour, Robert, Bolesworth Castle, near Chester
Barker, John, Broughton Lodge, Newton in Cartmel
*Barlow, Mrs., Greenhill, Oldham
Barratt, James, Lymm Hall, near Warrington
Bartlemore, Miss, Beechwood, Rochdale
Barton, Richard, Caldy Manor, Birkenhead
Barton, Samuel, Whalley Range, Manchester
Beamont, William, Orford Hall, Warrington
Beever, James F., Manchester
Bentley, Rev. T. R., M.A., St. Matthew's Rectory, Manchester
Berlin Royal Library
Beswicke, Mrs., Pyke House, Littleborough
Birmingham, Borough of, Central Free Library, Birmingham
Birley, Hugh, M.P., Moorlands, near Manchester
Birley, Rev. J. S., M.A., Halliwell Hall, Bolton
*Birley, Thomas H., Hart Hill, Eccles, Manchester
Blackburn Free Public Library and Museum
Blackburne, John Ireland, Hale, near Warrington
Bolton Public Library, Bolton-le-Moors
Booker, Rev. John, M.A., F.S.A., Sutton, Surrey
Booth, Benjamin W., Swinton, near Manchester
Booth, John, Greenbank, Monton, Eccles
Booth, William, Holly Bank, Cornbrook, Manchester
Boston, U. S., Public Library
Bower, Miss, Old Park, Bostol, Abbey wood, London S.E
Bowers, The Very Rev G. H., D D., Dean of Manchester
Brackenbury, Miss, Brunswick Terrace, Brighton
Bradshaw, John, Jun., Manchester
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*Brooks, W. Cunliffe, M.P., M.A., F.S.A., Barlow Hall Manchester
Brown, Mrs , Winckley Street, Preston
Browne, William Henry, Chester
Buckley, Sir Edmund, Bart., M.P., Dinas Mowddwy
Bunting, Thomas Percival, Manchester
Bury Co-operative Society, Bury, Lancashire

CAINE, Rev. William, M.A., Chaplain County Gaol, Manchester
Cambridge, Christ's College Library
Cassels, Rev. Andrew, M.A., Batley Vicarage, near Dewsbury
*Chadwick, Elias, M.A., Pudlestone Court, Herefordshire
Chichester, The Bishop of
Christie, R. C., M.A., Manchester
*Churchill, William, Brinnington Lodge, near Stockport
*Clare, John Leigh, Liverpool
Clarke, Archibald William, Scotscroft, Didsbury
Clegg, Thomas, Manchester
Colley, T. Davies-, M.D., Chester

Cooke, Thomas, Rusholme Hall, near Manchester
Corser, Rev. Thomas, M.A., F.S.A., Stand, near Manchester
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Coulthart, John Ross, Ashton-under-Lyne
*Crawford and Balcarres, The Earl of, Haigh Hall, near Wigan
Cross, William Assheton, Red Scar, Preston
Crosse, Thomas Bright, Shaw Hill, near Chorley
Crossley, George F., Beech Tree Bank, Prestwich
Crossley, James, F.S.A., Manchester, *President*
Crossley, Croslegh Dampier, Scaitcliffe House, Todmorden
Croston, James, Cheetham Hill
Cunningham, William Alexander, Manchester

DARBISHIRE, Samuel D., Pendyffryn, near Conway
Darwell, Thomas, Manchester
Dean, Rev. Thomas, M.A., Warton, near Lancaster
Dearden, Thomas Ferrand, Rochdale
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Delamere, The Lord, Vale Royal, near Northwich
Devonshire, The Duke of, Holker, Cartmel
Dilke, Sir C. W., Bart, 76, Sloane Street, London
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Dobson, William, Preston
Downes, W. F., Manchester
Doxey, Rev. J. S, Milnrow, Rochdale
Durnford, The Ven. Richard, M.A., Rectory, Middleton, Archdeacon and Hon. Canon of Manchester

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Eccles, Richard, Wigan
Eckersley, Thomas, Wigan
Egerton, Sir Philip de Malpas Grey, Bart., M.P., Oulton Park, Tarporley
Egerton, The Lord, Tatton Park, Knutsford
Ellesmere, The Earl of, Worsley Hall
Ellison, Cuthbert E., Worship Street, London
Ethelston, Rev. Hart, M.A., Cheetham Hill, Manchester

FEILDEN, Joseph, M.P., Witton, near Blackburn
*Fenton, James, M.A., F.S.A., Norton Hall, Mickleton Chipping Campden, Gloucestershire
Fernley, John, Southport
Ffarington, Miss, Worden Hall, near Preston
*Fielden, Samuel, Centre Vale, Todmorden
Fisher, William, Lancaster Banking Co., Preston
Fishwick, Major, Carr Hill, Rochdale
Fleming, William, M.D., Rowton Grange, Chester
*Fort, Richard, M P., Read Hall, Padiham
Forster, John, Palace Gate House, Kensington, London
Frere, W. E., 42, Clarges Street, London

GARNETT, Wm. James, Quernmore Park, Lancaster
Gibb, William, Swinton Lodge. Manchester
Gladstone, Murray. F.R.A.S, Broughton, Manchester
*Gladstone, Robert, Highfield, near Manchester
Goss, Right Rev. A., D.D., St. Edward's College, Liverpool
*Greenall, Gilbert, Walton Hall, near Warrington
Greenhalgh, Rev. Henry Canon, Weldbank, Chorley

HADFIELD, George, M.P., Manchester
Hailstone, Edward, F.S.A., Horton Hall, Bradford, Yorkshire
Hardman, Henry, Bury, Lancashire
Hardy, William, F.S.A., Duchy of Lancaster Office, London
Hargreaves, George J., Piccadilly, Manchester
Harris, George, F.S.A., Registrar of the Court of Bankruptcy, Manchester
Harrison, William, Rock Mount, St. John's, Isle of Man.
*Harrison, William, F.S.A., F G.S, F.R.S., Antq. du Nord. Samlesbury Hall, near Preston
Harter, James Collier, Leamington
*Harter, William, Hope Hall, near Manchester
Hatton, James, Richmond House, near Manchester
Haworth, William, Burnley
Healey, Henry, Smallbridge, Rochdale
Heelis, Stephen, Manchester
Henderson, Rev. John, Parsonage, Colne
*Henry, W. C., M.D., F.R.S., Haffield, near Ledbury
Heron, Rev. George, M.A., Carrington, Cheshire
Heywood, Arthur Henry, Manchester, *Treasurer*
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Heywood, James, F.R.S., F.G.S., 26, Palace Gardens, Kensington, London
Heywood, Thomas, Pendleton, near Manchester
Heywood, Rev. Henry R., M.A , Swinton, Manchester
Hickson, Thomas, Melton Mowbray
Higson, James, Ardwick Green North, Manchester
Higson, John, Birch Cottage, Lees, near Oldham
Hilton, William Hughes, Booth Street, Manchester
Hoare, P. R., Kelsey Park, Beckenham, Kent
Holden, Thomas, Springfield, Bolton-le-Moors
Holdsworth, John, Eccles
*Hoghton, Sir Henry de, Bart.
Hornby, Rev. George, B.D.
Hornby, Rev. William, M.A , St. Michael's, Garstang, Hon. Canon of Manchester
Howard, Edward C., Brinnington Hall, Stockport
Howard, The Honorable Richard Edward, D.C.L, Manchester
Howarth. Henry H., Castleton Hall, Rochdale
Hughes. Thomas, F.S.A., Grove Terrace, Chester
Hull, William Winstanley, The Knowle, Belper
*Hulton, Rev. C. G., M.A., Emberton, Newport Pagnel, Bucks
Hulton, W. A., Hurst Grange, Preston
Hume, Rev. A., LL.D., D C.L., F.S.A., Liverpool
Hutchinson, Robert Hopwood, Tenter House, Rochdale

JACSON, Charles R., Barton Lodge, Preston
Jervis, Thomas B., Ambleside
Johnson, Jabez, Pennington Hall, near Manchester
Johnson, W. R., The Cliffe, Wybunbury, Nantwich
Jones, Jos., Abberley Hall, Stourport
Jones, Wm. Roscoe, Athenæum, Liverpool

Jones, Thomas, B.A., F.S.A., Chetham Library, Manchester
Jordan, Joseph, F.R.C.S., Manchester

KAY, Samuel, Oakley House, Weaste, Manchester
Kemp, George Awke, Rochdale
Kennedy, Jno. Lawson, Aldwick Hall, Manchester
Kershaw, James, Manchester
Kershaw, John, Cross Gate, Audenshaw, near Manchester
Kershaw, Rev. J. C., M.A., Walton-le-dale

LANGTON, William, Manchester
Law, Wm., Bent House, Littleborough, Rochdale
Lees, J. Evans, Hathershaw, Oldham
Lees, Rev. William F., M.A., Sedlow Parsonage, Reigate
Legh, G. Cornwall, M.P., F.G.S., High Legh, Knutsford
*Leigh, Major Egerton, Jodrell Hall, Holmes Chapel
Leigh, Henry, Patricroft
Leigh, Miss, The Limes, Hale, near Warrington
Lingard, John R., Stockport
Lingard, R. B. M., Cheetham Hill
Litler, H. W., Oldham
Lowndes, Edward C., Castle Combe, Chippenham
*Loyd, Edward, Lillesden, Hawkhurst, Kent
*Loyd, Lewis, Monks Orchard, Bromley, Kent
Lycett, W. E., Manchester
Lyon, George, Manchester

MCCLURE, William, Piccadilly, Manchester
MacKenzie, John Whitefoord, Edinburgh
Makinson, A. W., 18, Abingdon Street, Westminster
Manchester Chetham Library
Manchester Free Library
Manchester Independent College
*Manchester, The Bishop of
Manchester Union Club
Mann, Robert, Manchester
Mare, E. R. Le, Manchester
*Marriott, John, Liverpool
Marsden, Rev. J. H., B.D., F.R.G.S., Canon of Manchester
Marsden, G. E., Manchester
*Marsh, John Fitchett, Warrington
Mason, Hugh, Groby Lodge, Ashton-under-Lyne
Massie, Rev. E., M.A., Gawsworth Rectory, near Congleton
Master, The Ven. Archdeacon, M.A., Croston
Mayer, Joseph, F.S.A., Lord-street, Liverpool
Melbourne Public Library
Mellor, Thomas, F.R.C.S., Oxford Road, Manchester
Miller, James, Manchester and Liverpool District Bank, Manchester
Monk, John, Q.C., The Temple, London
*Mosley, Sir Oswald, Bart., Rolleston Hall, Staffordshire
*Moss, Rev. John James, Otterspool, Liverpool
Moult, William, Parkside, Prescot
Murray, James, Manchester

NAYLOR, Miss, Altrincham
*Neild, Jonathan, Jun., Rochdale
Newall, H. G. F., Hare Hill, Littleborough
*Newbery, Henry, Docklands, Ingatestone, Essex
Nicholson, James, F.S.A., Thelwall Hall, Warrington

ORMEROD, George, D.C.L., F.R.S., F.S.A., F.G.S., Sedbury Park, Gloucestershire
Ormerod, Henry Mere, Manchester
Owen, John, Stretford Road, Hulme, Manchester
Oxford, All Souls' College
Oxford, Brasenose College

*PARKER, Robert Townley, Cuerden Hall, near Preston
Parker, Rev. Arthur Townley, M.A., Hon. Canon of Manchester, Royle, Burnley
Parkinson, Miss, Ann's Hill, Cockermouth
Parkinson, Colonel, Eppleton Hall, Fence Houses, Durham
*Patten, Rt. Honble. J. Wilson, M.P., Bank Hall, Warrington
Pedder, Richard, Preston
Peel, George, Brookfield, Cheadle
Peel, Jonathan, Knowlmere Manor, near Clitheroe
Perris, John, Lyceum, Liverpool
Philippi, Frederick Theod., Belfield Hall, near Rochdale
*Philips, Mark, The Park, Manchester
Piccope, Rev. G. J., M.A., Yarrell, Wansford, Northamptonshire
Picton, J. A., F.S.A., Clayton Square, Liverpool
Pierpoint, Benjamin, Warrington
Pitcairn, Rev. J. P., M.A., Vicarage, Eccles
*Platt, John, M.P., Werneth Park, Oldham
Pooley, W. O., Manchester
*Prescott, J. B.
Preston Shepherd's College
Price, Rev. Henry H., M.A., Ash Parsonage, Whitchurch, Salop

RADFORD, Richard, Manchester
Radford, Thomas, M.D., Higher Broughton, near Manchester
Raine, Rev. James, M.A., Prebendary of York
Raines, Rev. F. R., M.A., F.S.A., Vicar of Milnrow and Hon. Canon of Manchester, *Vice President*
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Redhead, R. Milne, F.L.S., F.R.G.S., Seedley, Manchester
Reform Club, London
Reiss, Mrs., Broom House, near Manchester
Renaud, Frank, M.D., Piccadilly, Manchester
Reynolds, Rev. George W., Diocesan Church Building Society, Manchester
Rhodocanakis, H. H. The Prince, C.K.G., Ph.D., F.S.A.A., F.G.H.S., Higher Broughton, Manchester
Rickards, Charles H., Manchester
Rigby, Samuel, Bruch Hall, Warrington
*Roberts, Chas. H. Crompton, Sunnyside, Upper Avenue Road, Regent's Park, London

Roberts, Alfred Wm., Larkfield, Rochdale
Robinson, Dixon, Clitheroe Castle, Clitheroe
Robson, John, M.D., Warrington
Rochdale Library
Royds, Albert Hudson, Rochdale
Royle, Alan, Hartford Hill, near Northwich
Rushton, James, Forrest House, Newchurch
Rymer Thomas, Cheetham Hill

SALISBURY, Enoch Gibbon, Glan Aber, Chester
Satterfield, Joshua, Alderley Edge, near Manchester
Schofield, Wm. Whitworth, Buckley Hall, Rochdale
*Scholes, Thomas Seddon, Dale Street, Leamington
Sharp, John, Lancaster
Sharp, William, 102, Piccadilly, London
Shaw, George, St. Chad's Upper Mills, Saddleworth
Shuttleworth, Sir J. P. Kay, Bart., M.D., Gawthorpe Hall, Burnley
Simms, Charles S., Manchester
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Simpson, Rev. Samuel, M.A., Greaves House, near Lancaster
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